



CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

Agenda Item # 1

**Prepared and
Submitted By:**

City Manager

WORKSHOP ON FINANCING, SCOPE, AND SCHEDULE FOR “REMAINING PUBLIC FACILITIES PROJECTS”

RECOMMENDED ACTION(S):

1. Conduct a workshop; and
2. Provide direction on issues to be further evaluated prior to establishing the FY '05 Budget and adopting a new Five Year Capital Improvement Program.

EXECUTIVE SUMMARY:

At the annual Goal Setting Retreat, the Council decided to conduct a workshop to review priorities for the public facilities projects that had not been yet been constructed or firmly committed. We recently learned that the new Library construction project was not approved for State funding, so that project is among those to be considered.

The Five Year Capital Improvement Program includes the following projects to be reviewed in the workshop:

- Library
- Outdoor Sports Complex
- Regional Soccer Complex
- Expansion of El Toro Youth Center
- Relocation and Expansion of Corporation Yard
- Expansion and Modernization of City Hall
- Fire Station

Attached is a background memo that discusses each of these projects, their potential sources of funding, and the current schedules. Some of the projects are funded with RDA funds in accordance with prior allocation decisions. Others are funded from a combination of sources including debt financing.

Some of the projects, as currently planned, are linked. For example, in order to meet a long term program goal of locating engineering staff on the city hall campus, it is anticipated that the current library building would be rehabilitated, which itself requires the construction of a new library. Similarly, the outdoor sports complex project assumes that a new regional soccer complex will be constructed, which would allow the CYSA to move to a new location.

FISCAL IMPACT: The Council may provide direction on priorities, funding sources, or scope that would require changes to the Five Year Capital Improvement Program to be presented in May 2004.



Memorandum City Manager's Office

Date: November 5, 2003
To: City Council
From: Ed Tewes, City Manager
Subject: Priorities for Remaining Facilities

The City has completed or is constructing important public facilities to meet community needs:

- Community and Cultural Center (completed December 2002);
- Aquatics Complex (expected opening end of May 2004);
- Police Station (expected completion June 2004); and
- Indoor Recreation Center (under design; expected completion early 2006).

The following important projects have not yet begun or are in the early stages of development, providing an opportunity for Council to provide direction on the scope, location, schedule, and financing strategy:

- Library
- Outdoor Sports Complex
- Regional Soccer Complex
- Expansion of El Toro Youth Center
- Relocation and Expansion of Corporation Yard
- Expansion and Modernization of City Hall
- Fire Station

To assist the Council in establishing priorities for the remaining projects we have provided background information for each project with summary comments on: project scope, location, cost, financing sources, schedule, and options.

Since RDA funds are an important source of funding for some of these projects, we have also attached the summary of the Council's allocation of the \$147 million authorized by the 1999 Redevelopment Plan amendment. However, most of the projects will be financed with a combination of other sources, including debt financing.

The purpose of the workshop is to encourage discussion about priorities, and to raise questions or issues to be explored prior to adopting the next formal Five Year Capital Improvement Program.

LIBRARY

Scope: New community library of 40,000 s.f.

Location: Vacant property west of the current library and city hall at DeWitt and Main.

Cost: \$21.1 million including land, design, and construction.

<u>Financing:</u>	State Library Bond	\$13.7 million
	RDA	5.4
	Library JPA (for design)	0.4
	Library JPA (for construction)	0.6*
	Development Impact Fees	<u>1.0*</u>
	Total	\$21.1 million

***Note:** Contributions will be received over a long period of time beyond the construction. It is recommended that the RDA advance a total of \$7 million, with \$1.6 million to be repaid from those future income streams. Accordingly, the net RDA allocation is \$5.4 million.

Schedule: Had the State approved the grant, we would have moved immediately to the Design Development phase, with construction expected to be completed by early 2006. A new schedule will need to be adopted based on which option is selected.

Options: The City's application for Round II of the State Library Bond allocations was not approved. The following options should be discussed:

1. Apply for Round III in January 2004.
2. Reduce the scope of the project to only a remodel and expansion that can be accomplished with available RDA and development impact fee resources.
3. Seek voter approval for a property tax increase to support a General Obligation Bond Issue.
4. Delay the project and include it as a possible project to be funded from a future amendment to the RDA plan that would raise the tax increment cap above \$147 million.

OUTDOOR SPORTS COMPLEX

Scope: Nearly 38 acres of outdoor sports fields in accordance with the Parks and Recreation Master Plan on the site of the current CYSA soccer complex.

Location: Condit Road, between San Pedro and Barrett.

Cost: \$10 million at build out, plus \$7.6 million for land.

Financing: RDA will make the final payment on the installment purchase this year.

The CIP includes \$2.7 million appropriated from the Parks Development Fund for the initial phase; subsequent phases are currently unfunded.

(**Note:** The new “community recreation facilities” impact fee will reimburse the Park Development Fund.)

Schedule: This project will not get underway until CYSA is able to move to a new regional soccer complex which, at the earliest, would be 2005.

Options: The current plan is to allow CYSA to continue using the fields for an additional year while an alternate soccer complex is constructed adjacent to Sobrato High School. The initial phase of development has not been planned in detail but will include ball field development, restrooms, and perhaps parking improvements. The Council has asked the Parks and Recreation Commission to recommend a Phase I approach that might involve partnerships with community sports groups.

REGIONAL SOCCER COMPLEX

- Scope:** At least 16 soccer fields with parking, restrooms, and support facilities for large tournament play, especially on weekends.
- Location:** Adjacent to Sobrato High School.
- Cost:** CYSA estimates a cost of \$5+ million.
- Financing:** The RDA has allocated \$1 million to support the project. CYSA and its District II will be responsible for raising the balance of the capital costs. The City of San Jose is paying for the environmental review, and will be responsible for entering into a lease or use permit with CYSA/District II.
- Schedule:** San Jose expects to complete the environmental review by June 2004, and immediately thereafter enter into a lease or use agreement with CYSA. The final construction schedule is dependent on CYSA's ability to raise the necessary capital funds, but would be completed as early as January 2005.
- Options:** The Sobrato site is the only location that is being pursued by CYSA/District II at this time. If it cannot be developed, it is possible that CYSA will build a regional soccer complex in another community in northern California. If so, the \$1 million allocated by the RDA could be reprogrammed to other projects.

EXPANSION OF EL TORO YOUTH CENTER

Scope: A nonprofit organization, Community Solutions, currently operates the El Toro Youth Center in a 7,000 s.f. City facility on Crest Avenue. The project would expand the space to a minimum of 20,000 s.f.

Because the expansion might include remodeling of the Friendly Inn (currently occupied by the YMCA and Senior Center), a master plan will be prepared this year to identify options.

Location: Crest Avenue.

Cost: No detailed plans have been identified. The Five Year CIP allocates \$1.3 million for this project.

Financing: The Five Year CIP anticipates that \$1.2 million will be generated through a “Section 108” loan, whereby the City would forego five to six years of future CDBG annual allocations for community development activities. The Master Plan is funded by RDA.

Schedule: The Master Plan will be completed this year and will identify the project scope and schedule.

Options: It is anticipated the Indoor Recreation Center will eliminate the demand for a separate YMCA facility and Senior Center so the Friendly Inn is the likely location for any expansion.

A portion of the Friendly Inn may still be needed for the YMCA Mt. Madonna Branch administration offices.

RELOCATION AND EXPANSION OF CORPORATION YARD

Scope: The existing Corporation Yard and offices are overcrowded on a 1.8 acre parcel adjacent to Community Park. The project would provide 4 to 5 acres of land for offices and storage of vehicles, equipment, and materials.

Location: In order to develop Community Park, it is preferable for the Corporation Yard to relocate. Two options have been explored in the master planning process so far: 1) move north to the current school bus yard when the lease expires in xxxx; and 2) identify land in an industrial area elsewhere in Morgan Hill.

Cost: The Bus Yard option would cost about \$5.5 million.

A new industrial site would cost about \$7.6 million, including land.

Financing: It is anticipated the project would be financed through a lease revenue bond with annual debt service payments made from the General Fund, the Community Development Fund, and utilities in proportion to the space occupied. The General Fund portion costs are NOT currently included in the Five Year Financial Forecast.

Schedule: There is no firm schedule for this project. If the Corporation Yard moves to the Bus Yard, it will not be available until July 1, 2006, unless the School District exercises its option to extend the lease for one additional year. If the move is to an industrial site, it may be appropriate to acquire the site early and develop the plans for relocation when firm financing is identified.

Options: Expansion of Community Park would be enhanced by relocation of both the City Corporation Yard and the School Bus Yard, however, the Corporation Yard needs could be met by moving north to the Bus Yard. That would add 1.8 acres to Community Park.

If an industrial site is chosen, and the Bus Yard is vacated, Community Park could be expanded by about 6.4 acres.

EXPANSION AND MODERNIZATION OF CITY HALL

- Scope:** Expansion to accommodate the move of engineering staff to City Hall, move of BAHS and Finance into a permanent space, and for future staff growth. Project includes expanded public lobby space, conference rooms, and a new council chambers. It is anticipated that the current library building would be remodeled and occupied by City staff, with a new council chambers built in the space between the library and the current city hall.
- Location:** Current City Hall/Library campus.
- Cost:** \$4 million (no detailed plans have been prepared).
- Financing:** It is anticipated the project would be financed through a lease revenue bond with annual debt service payments made from the General Fund, the Community Development Fund, and utilities in proportion to the space occupied. The General Fund portion costs are NOT currently included in the Five Year Financial Forecast.
- Schedule:** The project is relatively low priority and is currently scheduled for FY '07, but, in any event, requires the existing library building to be available for remodeling.
- Options:** The current Civic Center campus provides the most cost effective solution, although it may not be most centrally located. Other sites might be available that would help stimulate Downtown revitalization, but would be more costly. If the current Civic Center campus is not used for city hall or the library, it could be made available for other uses including housing, a park site, or other community use. Another option is to identify an underused existing commercial or industrial building similar to the approach adopted for the Police Station.

FIRE STATION

- Scope:** The Fire Master Plan calls for a new station in the central part of town that should be sized to house an engine company, a second piece of apparatus, and a paramedic ambulance unit.
- Location:** We are acquiring a 1.8 acre site on Butterfield Boulevard from the VTA, adjacent to the Caltrain parking lot.
- Cost:** The Development Impact Fee Study assumed the cost of the project, including land, would be \$2,750,000.
- Financing:** The project will be financed by Development Impact Fees.
- Schedule:** A firm schedule has not been established, and will depend not simply on community growth, but our ability to finance the operational cost of an additional fire company. Negotiations with County Fire for a contract extension should be completed by January 2004, allowing a construction schedule to be developed.
- Options:** The Butterfield site is optimal, but other central sites might also meet the need.

REVISED FINAL ALLOCATIONS

October 2003

	<u>Final Allocation</u> <u>(in \$000,000)</u>
Community and Cultural Center*	\$ 10.9
Library	5.5
Sports and Aquatics Center**	20.0
Indoor Recreation Center	26.2
Regional Soccer Complex	1.0
Flood Control	7.1
Street Improvements	15.0
Economic Development	15.0
Downtown RFC***	3.0
Housing	31.0
Administration	11.3
Unallocated****	<u>1.0</u>
TOTAL	<u>\$147.0</u>

* does not include \$5.7M carryover from "old" RDA funds

** only includes cost of land for the sports complex

*** includes \$1M allocated from economic development, housing, & street improvements

****includes savings from administration



CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

**TITLE: PERFORMANCE MEASURE UPDATE – FIRST
QUARTER FY 2003/04**

RECOMMENDED ACTION:
Receive and file

EXECUTIVE SUMMARY:

The City implemented Performance Measures into the FY 2002/03 Operating and Capital Budget, and on a quarterly basis, staff has been presenting Performance Measure Updates to the City Council. Attachment A is the update for the first quarter of FY 2003/04.

FISCAL IMPACT:

None.

Agenda Item # 2

Prepared By:

Chu Thai

Chu Thai

Approved By:

Finance Director

Submitted By:

City Manager

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
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[010-1100] CITY COUNCIL				
Responsibility: City Clerk's Office				
Council/Redevelopment Agency Meeting Minutes produced	51	86	12	
Time required to draft, proof and edit minutes for every 4 hours of meeting time	1.5 hours	1.5 hours	1.5 hours	
Total time to produce minutes	360 hours	425 hours	67 hours	
Percentage of Minutes completed without errors of fact	100%	98%	100%	
Completing Minutes within 2 weeks	100%	100%	100%	

[010-1220] COMMUNITY PROMOTIONS				
Responsibility: City Clerk's Office				
Proclamations Produced	50	190	15	
Staff time to coordinate/draft requests for proclamations for Council members, staff and outside requests	1.5 hours	1.5 hours	1.5 hours	
Hours to produce all proclamations	75 hours	285 hours	22.5 hours	
Percentage of Proclamations completed for a particular meeting date, as requested	100%	100%	100%	

[010-2410] COUNCIL SERVICES & RECORDS MANAGEMENT				
Responsibility: City Clerk's Office				
Number of requests for public records	661	895	165	
Amount of time to research/copy request for public records	95% in one day 4% in 10 days 1% in 10+ days	86.7% 11.8% 1.5%	87.3% 10.9% 1.8%	

[010-2420] ELECTIONS DIVISION				
Responsibility: City Clerk's Office				
Number of Statement of Economic Interests filed	95	108	3 (105)	This report only includes statements from 3 individuals recently hired/promoted. Annual reporting of designated filers (105) will be due in April 2004
Percentage filed by deadline	99%	99%	100%	
Percentage filed late	1%	1%	0%	

[010-1500] CITY ATTORNEY				
Responsibility: City Attorney's Office				
Standard contracts reviewed within ten days	100%	100%		
Amended Municipal Chapter Codes adopted by the City	3	4		

09/30/03 Update					
Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)	
Hours of MCLE	10	26			
Closure of more than 50% of defense cases under \$75,000 in legal fees	100%	100%			

[010-2100] CITY MANAGER					Responsibility: City Manager's Office
Percentage of workplan projects, City-wide, that are completed within the planned time frame	29%	35%	79%		
Actual General Fund expenditures as a percentage of the current General Fund budget	91.8%	93%	23%		
City General Fund reserves as a proportion of current General Fund revenue projections	71.1%	64%	66%		

[010-5140] CABLE TELEVISION					Responsibility: City Manager's Office
Number of cable complaints received	18	12	6		
Number of cable complaint processes completed	18	12	6		
Average number of days taken to completely process each cable complaint	Unavailable	10.67	2.67		

[010-5145] COMMUNICATIONS AND MARKETING					Responsibility: City Manager's Office
Pages of City Visions produced	62	72	16		
Dollars (not inclusive of staffing) spent on producing City Visions.	\$53,848	\$57,364	\$13,336		
Dollars per page of City Visions produced and distributed.	\$869	\$797	\$834		

[232-5800] SOLID WASTE MANAGEMENT DIVISION					Responsibility: City Manager's Office
Dollars spent communicating recycling information (excluding employee services)	\$59,948	\$87,044	\$21,642		
Tons of recycling collected	8,243	8,992	2,374		
Number of environmental promotions distributed	11	10	7		
Percentage of customers ranking their solid waste management services "good" or "excellent"	93	N/A	N/A		
Percentage of customers who say they have enough information to properly participate in the City's recycling program	92	N/A	N/A		
Percentage of customers participating in the recycling program	62%	63%	65%		

09/30/03 Update					
Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)	
Solid waste diversion rate	53%	47%	N/A		
Dollars spent communicating recycling information per ton of recycling collected	\$7.27/ton	\$9.68/ton	\$9.12/ton		

[010-2110] RECREATION DIVISION					Responsibility: Recreation and Community Services Division
Overall cost of staff time to develop Recreation Guide, recruit instructors, negotiate contracts	\$15,015	\$37,921	\$10,640		
Overall cost produce and advertise recreation classes	\$1,620	\$9,064	\$4,445	Fall 2003 Recreation Guide	
Number of participants	1,466	2,171	1,816	July, August, September 2003	
Cost per participant to produce Recreation Guide	\$11.35	\$4.17	\$2.44		
Percent cost recovery for Recreation Division	3.7%	5.2%	9.8%		

[010-2115] COMMUNITY AND CULTURAL CENTER					Responsibility: Recreation and Community Services Division
Facility rentals	N/A	117	120	July, August, September 2003	

[010-2200] HUMAN RESOURCES OFFICE					Responsibility: Human Resources Department
Cost of providing 24 hours of enhanced training (beyond legal requirements) to each employee per year (est. \$250 per employee)	\$9,711	\$37,307	\$14,347.87		
Number of recruitment processes which include selection criteria such as: flexibility, change management, attitude to work, fit for the organization, etc., in addition to the task requirements of the position	13 out of 26 recruitments	4 of 4	2 of 2		
Number of employees recognized for exemplary customer service, new ways of accomplishing work, successful cost reducing ideas, years of service	25	125	0	Recognition event held during 2 nd quarter – does not include “Pass the Buck” certificates given to employees which number over 200	
Number of HR staff hours spent in training, communicating and consulting to the number of HR staff hours spent recruiting to fill vacant positions.	1 to 4	3.5 to 4	3.5 to 4		
Cost to recruit and hire a new employee	\$3,800	\$2,500	\$2,850.00		
Percent of increase in customer satisfaction based on employee opinion survey follow-up	N/A	N/A	N/A		

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
[010-2210] VOLUNTEER SERVICES PROGRAM				
Responsibility: Human Resources Department				
Number of external requests for municipal volunteer opportunities to number of actual placements	75 to 15 20%	50 to 18	30 to 6	
Number of internal requests for volunteers to number of actual placements.	10 to 9 90%	12 to 11	3 to 2	
[770-8220] WORKERS COMPENSATION INSURANCE				
Responsibility: Human Resources Department				
Number of workers' compensation claims involving temporary disability benefits	7	9	2	
Number of lost work days caused by temporary disability	841	739	250	
Average length of time to bring an injured employee off temporary disability	120	74	36	
[010-2510] FINANCE				
Responsibility: Finance Department				
Staff hours designated for Accounts Payable	1,800 hours (est.)	2,000 hours	390	
Invoices processed	13,885 (est.)	13,871	3602	
% of invoices paid by due date	91% (est.)	86%	84%	
Average time to process an invoice	7.71 minutes (est.)	8.66 minutes	6.5 minutes	
[650-5750] UTILITY BILLING – SEWER & WATER				
Responsibility: Finance Department				
Staff hours designated to Utility Billing	4,168	4,168	975	
Bills processed per year	132,228	134,270	33,932	
Percent sent out error free	99.96%	96.9%	99.98%	
Average time to process a bill	1.89 minutes	1.87 minutes	1.72 minutes	
[795-8210] GENERAL LIABILITY INSURANCE				
Responsibility: Finance Department				
Percent of claims responded to within the statutory time frame of 45 days, either through a rejection of the claim or through a proposed resolution.	78%	97%	100%	
[010-3205] POLICE ADMINISTRATION				
Responsibility: Police Department				
Number of citizens' complaints regarding police services to the number of hours spent processing complaints.	N/A	100.85 hours (31 complaints)	3 Complaints/8.5 Hours	

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
Percent of formal citizens' complaints resolved within 45 days of receipt.	N/A	50%	50%	
Percentage of sworn personnel who receive 24 hours of Continued Proficiency Training	61%	42%	27%	
Deficiencies reported in the annual POST audit	13 sworn	0	No audit this quarter	

[010-3210] POLICE FIELD OPERATIONS				Responsibility: Police Department
Number of self initiated contacts compared to the number of calls for service.	SI - 16,637 CFS - 33,536	SI - 15,363 CFS - 25,668	SI - 3,363 CFS - 4,969	
Percent of clearance in Part I and Part II crime rates in Morgan Hill compared to the national rate	MH 18% National 21%	MH 13% National 21%	MH % National 21%	
Percent of Priority I calls responded to within 5 minutes of receipt	100%	100%	100%	
CFS prior to and after implementation of POP project	N/A	N/A	25 prior/19 after	

[010-3225] POLICE SUPPORT SERVICES				Responsibility: Police Department
Number of hours per week dedicated to the property/evidence function	35 hours/week	35 hours/week	35 hours/week	
Percent of property/evidence released or purged within 30 days of clearance	80%	100%	100%	
Percent of arrests entered into CJIC within 48 business hours of arrest date	95%	100%	100%	
Number of incident reports stored electronically	100%	5,184	1,232	

[010-3230] EMERGENCY SERVICES UNIT				Responsibility: Police Department
Number of preparedness presentation hours given to the community	N/A	176 hours	10 hours	
Number of organized CERT teams capable of operating within the City	N/A	6 teams of 15-25 members	6 teams of 15-25 members	
Number of emergency drills/exercises	N/A	3	0	
Number of sections of the disaster plan updated annually	N/A	2 new additions	0 sections	

[010-3245] POLICE SPECIAL OPERATIONS				Responsibility: Police Department
Number of investigations assigned to Special Operations	N/A	190	57	

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
Number of incidents investigated by division personnel submitted to the D. A.'s Office requesting the issuance of a criminal complaint	N/A	75	14	
Number of Neighborhood Watch Programs presented to the community	N/A	N/A	8	

[010-5450] ANIMAL CONTROL SERVICES UNIT			Responsibility: Police Department	
Number of hours per week spent enforcing animal license provisions of State law and local ordinance.	8 hours/day	8 hours/day	40 hours/week	
Number of animal licenses issued to Morgan Hill residents	2,978	1,128	221	
Number of Morgan Hill impounded animals returned to their owners within 4 days	N/A	32	17	
Number of unlicensed dogs impounded or owners cited compared to the number of licensed dogs	24 2,978	135 1,123	55 unl.imp./221 lic. 7 cites	
Percent of unaltered to altered Morgan Hill animals receiving licenses	24 2,978	135 1,123	24% 43/178	

[010-8270] POLICE DISPATCH SERVICES			Responsibility: Police Department	
Count the Number of 911 calls received	8,400	6,500	1756	
Average time to answer 98% of 911 phone calls	11 seconds	11 seconds (30% less than 5 seconds)	11 seconds (28% less than 5 seconds)	
Average time between receipt of a Priority I call and dispatch of a unit.	N/A	1:62	2:28	

[206-5120] PLANNING			Responsibility: Community Development Department	
Number and percent of SR Applications processed within 90 days (excluding CEQA projects requiring initial study or EIR)	16 applications; 3 incomplete 92%	32 applications: 9 incomplete, 18 completed within 90 days of application, 5 went before ARB within 90 days of app. = 100%	6 applications: 1 approved within 90 days; 4 set for ARB meeting (future) within 90 days; 1 incomplete – 100%	
Number of applications filed which require Architecture Review Board, Planning Commission or City Council approval	144	219	41	
Percent of RDCS Projects provided 30-day notice of default or expiration of allotment	70%	99%	100%	
Number of applications (which require ARB, PC or CC approval) processed per planner	Senior – 49 Assoc – 59 Asst – 18 Staff – 18	Senior – 65 Assoc – 56 Asst – 44 Staff – 54	Senior – 7 Assoc – 28 Staff – 6	

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
Percent of DRC comments received on time	80%	85%	80%	

[206-5130] BUILDING DIVISION		Responsibility: Community Development Department		
Percentage of inspections accomplished within a 24 hour response timeline	88%	100%	98.5%	
Number of complaints and cases processed	404	210	125	
Number of Code Enforcement cases investigated or mitigated	375	188	104	
Percent of Code Enforcement cases completed and closed	93%	91%	83 %	

[010-5440] PUBLIC WORKS PARK MAINTENANCE		Responsibility: Public Works Department		
Average Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	2 Days, 14 Hours 0	1 Day, 15 Hours 0	
Annual Maintenance Cost	\$11,611/acre	\$14,136/acre	Result Recorded Annually	

[202-6100] PUBLIC WORKS STREET MAINTENANCE		Responsibility: Public Works Department		
Average Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	4 Days 1.5 Hours	1 Day, 7 Hours 0	
Vegetation Abatement Program	N/A	N/A	0%	Program is done in Spring
Storm Drain System Facilities	N/A	N/A	80%	
Repair Maintenance Related Permanent Asphalt	N/A	N/A	70 Tons	
Curb Miles of Roadside Weed Abatement	12 Curb Miles	27.27 Curb Miles	N/A	Discontinued for FY03/04
Tons of Debris Removed by Street Sweeping	290 Tons	423 Tons	N/A	Discontinued for FY03/04

[206-5410] PUBLIC WORKS ENGINEERING		Responsibility: Public Works Department		
Number of Final Maps Recorded	12	16	1	
Number of Plan Checks returned on time	68 out of 79	145 out of 166	42 out of 47	
Number of Planning/Building Division referrals received	76	127	38	
Hours spent inspecting public improvements constructed by private developers	2,790	2,170	339	

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
[640-5900] PUBLIC WORKS SEWER OPERATIONS Responsibility: Public Works Department				
Average Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	20 Hours 12 Minutes	4.5 Hours 25 Minutes	
Sewer Main Restrictions Cleared	20	29	Discontinued	
LF Sewer Main Flushed/Restrictions Cleared	N/A	N/A	164,068/ 5	
[650-5710] PUBLIC WORKS WATER OPERATIONS Responsibility: Public Works Department				
Average Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	21 Hours 22 Minutes	13 Hours 1.75 Hours	
[650-5720] PUBLIC WORKS METER READING Responsibility: Public Works Department				
Average Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	18 Hours 14 Minutes	22 Hours 0	
Fire Hydrant Maintenance Performed	65	414	16	Maintenance is typically done winter/spring
Water Meter Tested - 2" or Greater	64	20	0	Meters are tested April, 2003
Annual Cost to Read a Meter	\$0.71 per meter	\$0.59 per meter	Result Recorded Annually	
[650-5760] WATER CONSERVATION Responsibility: Public Works Department				
Cooperative efforts with Santa Clara Valley Water District to reduce water consumption	1	3		
[745-8280] PUBLIC WORKS CIP ADMINISTRATION Responsibility: Public Works Department				
Number of Engineering Division hours worked on all CIP Projects	8,000	10,879	2,673	
Number of CIP projects awarded	10	17	7	
Percentage of CIP projects completed within Council approved contingency	100%	90%	100%	
Hours spent inspecting public improvements constructed as CIP projects	1,490	3,303	652	
[317-7000] BUSINESS ASSISTANCE – ADMINISTRATION Responsibility: Business Assistance and Housing Services Department				
Value of building permits pulled for commercial tenant improvements	\$24 million	\$11.1 million	\$7,887,057	

09/30/03 Update Performance Measure	Actual Result for 2001-02	Actual Result for 2002-03	Status of measure as of 09/30/03	Explanatory Comments (as needed)
Number of business provided Ombudsman services, sent information or met with by a BAHs representative	N/A	4,231	1,051	
Square footage in building permits pulled for new commercial/industrial space	100,000	227,381	109,624	
Amount of sales or property tax generated from new businesses	N/A	\$92,700	\$78,871	
Number of new businesses generating sales tax revenue	N/A	209	5	

[327-7100] HOUSING					Responsibility: Business Assistance and Housing Services Department				
Number of Refinance application requests	N/A	110	29						
Number of BMR Refinance, Rental and Homeownership application requests	214	358	48						
Number of Refinancing requests approved	135	291	13						
Number of BMR Rental occupied and BMR units sold	22	22	23						
Number of Refinance, BMR Rental and Homeownership applications received per F.T.E. staffing for the program	134/FTE	250/FTE	47/FTE						
Amount of square footage of commercial/industrial buildings developed by businesses receiving ombudsman assistance	N/A	N/A	80,627						
Number of jobs created/retained by businesses receiving ombudsman assistance	N/A	N/A	484						
Number of marketing packets distributed to prospective businesses	N/A	N/A	65						



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

ACCEPTANCE OF PUBLIC IMPROVEMENTS AT THE END OF ADAMS COURT AND ALONG A PORTION OF COCHRANE ROAD (ADAMS COURTYARD BUSINESS PARK)

RECOMMENDED ACTIONS:

1. Adopt the attached resolution accepting the public improvements for Adams Courtyard Business Park.
2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

Adams Courtyard Business Park was conditioned as part of their project to improve the end of Adams Court and a portion of Cochrane Road. All of the public improvements have been completed in accordance with the requirements of the Improvement Agreement between the City of Morgan Hill and Richard A. Raynes, Robert C. Dobkin, and Kathleen C. Dobkin Family Trust dated September 15, 2002 and specifically set forth in the plans and specifications approved by the City.

FISCAL IMPACT: Staff time for this project was paid for by development fees.

Agenda Item #

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
ACCEPTING THE PUBLIC IMPROVEMENTS FOR ADAMS COURTYARD
BUSINESS PARK PROJECT.**

WHEREAS, Richard A. Raynes, Robert C. Dobkin, and Kathleen C. Dobkin Family Trust, the owner of the Adams Courtyard Business Park project, entered into an Improvement Agreement on September 15, 2002: and

WHEREAS, Jim Ashcraft, Public Works Director, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said development.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance provisions referred to in Paragraph 10 of the Improvement Agreement of September 15, 2002.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the public improvements.
4. If requested by the developer, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on this 5th day of November, 2003.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. adopted by the City Council at the Regular City Council Meeting of November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION

CITY OF MORGAN HILL

ADAMS COURTYARD BUSINESS PARK PROJECT

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, signed below, represents the City of Morgan Hill as the owner of the public improvements for the above named development. Said improvements were substantially completed on October 30, 2003, by Richard A. Raynes, Robert C. Dobkin, and Kathleen C. Dobkin Family Trust, the developer of record and accepted by the City Council on November 5, 2003. Said improvements consisted of public streets, utilities, and appurtenances.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2003.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ACCEPTING THE PUBLIC IMPROVEMENTS
FOR ADAMS COURTYARD BUSINESS PARK PROJECT.**

WHEREAS, Richard A. Raynes, Robert C. Dobkin, and Kathleen C. Dobkin Family Trust, the owner of the Adams Courtyard Business Park project, entered into an Improvement Agreement on September 15, 2002: and

WHEREAS, Jim Ashcraft, Public Works Director, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said development.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance provisions referred to in Paragraph 10 of the Improvement Agreement of September 15, 2002.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the public improvements.
4. If requested by the developer, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of November, 2003, by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🔒 CERTIFICATION 🔒

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *November 5, 2003*

SUBDIVISION, SD-02-11: DEWITT - MARQUEZ

RECOMMENDED ACTION: Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY: A request to subdivide a two-acre parcel to allow for the construction of five units located on the west side of DeWitt Avenue between Oak Park Drive and Spring Drive, approximately 700 feet south of the intersection with West Dunne Avenue. In the 2002 Measure "P" competition, the project was awarded two building allotments for FY 2003-04 and two allotments for FY 2004-05. As there is an existing home, no Measure "P" allotment is required for the fifth home site. In May 2003, the project received approval for a Residential Development Agreement in order to adjust the City's standard development schedule to fit the needs of the project.

The project site is within an existing RPD that was approved in 1996 and allows deviation from the minimum setbacks and lot size requirements. The lots range in size from 9,651 to 23,007 square feet. Lots 1 through 4 of the subdivision do not meet the minimum lot size requirements. However, the lot size transition within the subdivision works well within the project and also with the adjacent and future development within the area. The RPD allows the density to be shifted to allow construction of the smaller lots on the gently sloping lower areas to the east on the site. Price Drive will be extended as a full street with curb, gutter, and sidewalk between Price Court and DeWitt Avenue and full street improvements along the project frontage on DeWitt Avenue including curb, gutter and sidewalk on the west side of the street as part of the project. A storm detention pond with capacity to store runoff from a 100-year storm for the entire 9.45-acre RPD area will be constructed on the property lying east of DeWitt Avenue belonging to Rocke Garcia. The project applicant will be required to design, finance and build the planned storm water detention facilities.

Section 17.20.110 of the Subdivision Ordinance provides for City Council review of tentative maps that have been approved by the Planning Commission. The Council may schedule a hearing to reconsider the Commission action, or by taking no action, let the Commission's action of approval stand.

This application was reviewed by the Planning Commission at its October 14, 2003, meeting. The Commission voted 6-0, with one Commissioner absent, approving the request. Several residents of adjacent homes to the subdivision expressed concern at the meeting in regards to the extension of Price Drive between John Telfer Drive and DeWitt Avenue. The Planning Commission resolution, conditions of approval and subdivision map is attached. The staff report and minutes for the subdivision are attached to the development agreement amendment request within this same agenda.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the costs of processing this application.

Agenda Item # 4

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

RESOLUTION NO. 03-73

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A FIVE (5) LOT SUBDIVISION CONSISTING OF FIVE (5) SINGLE-FAMILY RESIDENTIAL LOTS ON A TWO ACRE PORTION OF A 9.45 ACRE RESIDENTIAL PLANNED DEVELOPMENT PROJECT SITE LOCATED ON THE WEST SIDE OF DEWITT AVE., 700 FT. SOUTH OF THE DEWITT AVENUE INTERSECTION WITH WEST DUNNE AVENUE. (APN 773-08-014) (APPLICATION SD 02-11: DEWITT – MARQUEZ)

WHEREAS, such request was considered by the Planning Commission at their regular meeting of September 23, 2003 and continued to the October 14, 2003 regular meeting; and

WHEREAS, the Planning Commission approved application SD-02-11: DeWitt – Marquez at the regular meeting of October 14, 2003; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials, have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The approved project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. An expanded environmental initial study has been prepared for this project, and has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. A Mitigated Negative Declaration will be filed.

SECTION 3. The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.

SECTION 4. The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit "A", and by this reference incorporated herein.

SECTION 5. The approved project shall be subject to the mitigation measures as identified in the Mitigated Negative Declaration and Expanded Environmental Initial Study prepared for the project in August 2003.

SECTION 6. Development of parcel APN 773-08-014 shall proceed in accordance with the following standards:

- 1) The left side yard of Lot 1 shall have a 6-foot setback, both side yards of Lots 2 and 3 shall have 5-foot setbacks, the right side yard setback on Lot 4 shall be 7 ½ feet and both side yards of Lot 5 shall have 10-foot setbacks.
- 2) Lot 1 shall be 9,651 square feet; Lot 2 shall be 9,849 square feet, Lot 3 shall be 10,527 square feet, Lot 4 shall be 10,249 square feet, and Lot 5 shall be 21,366 square feet.

PASSED AND ADOPTED THIS 14th DAY OF OCTOBER 2003, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON

NOES: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: ENGLES

ATTEST:

APPROVED:

FRANCES O. SMITH
Deputy City Clerk

JOSEPH H. MUELLER, Chair

AFFIDAVIT

I, _____, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

, applicant

Date



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

Agenda Item # 5

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

SUBDIVISION, SD-03-05: DEWITT – MARRAD GROUP

RECOMMENDED ACTION: Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY: A request to subdivide a two-acre parcel to allow for the construction of four units located on the west side of DeWitt Avenue between Oak Park Drive and Spring Drive, approximately 700 feet south of the intersection with West Dunne Avenue. In the 2003 Measure "P" competition, the project was awarded two building allotments for FY 2004-05 and one allotment for FY 2005-06 for a total of three allotments. As there is an existing home, no Measure "P" allotment is required for the fourth home site.

On November 20, 1996, the City Council approved rezoning for the 9.45-acre DeWitt Landowners project area including an RPD overlay. The subdivision map as submitted is in conformance with the rezoning and RPD plan. Each of the proposed lots meets the required 75-foot minimum lot width and the 100-foot minimum lot depth and the lots are adequately sized to accommodate the proposed units. The lot layouts planned for all four lots meet the minimum zoning requirements of the R1 (12000) district as identified in Section 18.12.060 of the zoning code. The lots range in size from 12,000 to 31,596 square feet. The applicant has submitted elevations for Lots 1 through 3. Lot 4 is planned to be a custom lot to be developed in the future, in accordance with the proposed Residential Development Agreement. The lot size transition within the development works well within the project and also with the adjacent and future development within the area. The lot sizes reflect the allowed building density with smaller lots on the gently sloping lower areas to the east on the site and one larger lot on the west portion of the site where there are steeper slopes. Staff and the Planning Commission support the overall lot and street layout of the subdivision, which, as proposed, is consistent with the 2003 Measure "P" proposal.

Section 17.20.110 of the Subdivision Ordinance provides for City Council review of tentative maps that have been approved by the Planning Commission. The Council may schedule a hearing to reconsider the Commission action, or by taking no action, let the Commission's action of approval stand.

This request was reviewed by the Planning Commission at its October 14, 2003, meeting. The Commission voted 6-0, with one Commissioner absent, approving the request. Several residents of adjacent homes to the subdivision expressed concern at the meeting in regards to the extension of Price Drive between John Telfer Drive and DeWitt Avenue. The Planning Commission resolution, conditions of approval and subdivision map is attached. The staff report and minutes for the subdivision are attached to the development agreement request within this same agenda.

FISCAL IMPACT: None. Filing fees were paid to the City for the costs of processing this application.



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

APPROPRIATION OF FUNDS FOR NON-BUDGETED PERCHLORATE CONTAMINATION RELATED EXPENSES IN FY 03/04

RECOMMENDED ACTION(S): Approve the appropriation of \$359,358 from our unappropriated Water Fund balance (650) to fund our on-going expenses for perchlorate contamination.

EXECUTIVE SUMMARY: As Council is aware, we are spending considerable funds ensuring our public water supply remains safe and meets or exceeds all standards of the State Department of Health Services (DOHS) for water quality. We will continue to work with our special counsel seeking reimbursement from the Olin Corporation, the party responsible for the contamination.

At this time it is necessary to appropriate funds from our unappropriated water fund balance to pay for the on-going costs related to perchlorate contamination. The following expenses require additional appropriations as noted:

		<u>Actual/Est. Expenditure</u>	<u>Appropriation Needed</u>	<u>Account Number</u>	
1.	<u>Nordstrom Well Perchlorate Removal Plant</u>			650-42231-5710	
	Lease of equipment	\$129,642			
	Resin Change-out	\$ 80,358	\$ 80,358		
	Water Quality Testing	<u>\$ 15,000</u>	<u>\$ 15,000</u>		
	<i>TOTAL</i>	<i>\$225,000</i>	<i>\$ 95,358</i>		
2.	<u>Burnett Well Nitrate Removal Plant</u>			650-42231-5710	
	Lease	\$ 47,630	\$ 9,630		
	Plant Operation Costs	\$142,370	\$142,370		
	Staff Overtime	<u>\$ 17,000</u>	<u>\$ 17,000</u>		
	<i>TOTAL</i>	<i>\$207,000</i>	<i>\$169,000</i>		
3.	<u>Legal/Technical Consultants</u>	<i>TOTAL</i>	<i>\$175,000</i>	<i>\$ 75,000</i>	650-42230-5710
4.	<u>Tennant Well Perchlorate Removal Plant</u>				
	Costs that are non-SCVWD reimbursed =	\$ 20,000	\$ 20,000	650-42231-5710	
	SCVWD Costs	<u>\$202,800</u>			
	<i>TOTAL</i>	<i>\$222,800</i>	<i>\$ 20,000</i>		
5.	<u>Peet Road Well</u>	<i>TOTAL</i>	<i>\$416,338</i>	<i>\$ 0</i>	
	<i>TOTAL</i>	<i><u>\$1,246,138</u></i>	<i><u>\$359,358</u></i>		

As Council is aware, our Finance Director is working on a report regarding the need to raise water rates. It is our hope, in the case of perchlorate contamination related costs, that we will be reimbursed eventually by the Olin Corporation.

FISCAL IMPACT: Sufficient funds currently exist in the unappropriated water fund balance to cover the total expense of \$359,358.

Agenda Item # 6

Prepared By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR WATSONVILLE BRIDGE WIDENING

RECOMMENDED ACTION(S):

1. Adopt Resolution supporting the Watsonville Bridge Widening project as the City's 2005-2006 Hazardous Elimination Safety (HES) project candidate.
2. Certify \$70,000 in matching funds will be appropriated from our unappropriated Traffic Impact Fund if we are successful in the grant application. City shall cover costs associated with administration, planning, design and inspection, estimated at \$50,000, plus 10% of the estimated construction cost (\$20,000).

EXECUTIVE SUMMARY: The City anticipates a call for projects in late November from the California Department of Transportation (Caltrans) for applications for the 2005/2006 Hazardous Elimination Safety (HES) funding cycle. The HES program provides funds for safety improvements on public roads, transportation facilities, bicycle or pedestrian pathways or traffic calming measures. The funds serve to reduce or eliminate accidents at selected locations for improvement. As with other grants, the City's proposed project would compete for funding with other agencies.

Staff recommends submitting an application for the 2005/2006 HES funding cycle. The proposed project would be titled "Watsonville Bridge Widening" and work would include widening both sides of the box culvert to include bike/pedestrian access as well as incorporating a new guard rail system. Since the bridge is located 50% in County jurisdiction and 50% within City limits, the application will be a joint effort. Staff has contacted the County and they have agreed to provide support, including their portion of construction costs. The improvements are consistent with the City's adopted Bikeway's Master Plan and the City's General Plan.

FISCAL IMPACT: City matching funds for this project will be appropriated from our unappropriated Traffic Impact Fee Fund if we are successful in obtaining this grant.

Agenda Item # 7

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL SUPPORTING GRANT FUNDING FOR
WATSONVILLE BRIDGE WIDENING**

WHEREAS, Caltrans will be accepting applications in November or December of this year for the Hazardous Elimination Safety (HES) program, fiscal year 2005-2006 funding cycle;

WHEREAS, and the City has adopted a Bikeway's Master Plan;

WHEREAS, and the proposed project is included in the City's Bikeway's Master Plan;

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill, certifies the project as the City's 2005/2006 HES project candidate for possible funding;

AND BE IT FURTHER RESOLVED that City Council certifies matching local funds of 10%.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of November, 2003, by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

☪ CERTIFICATION ☪

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

MAIN AVENUE / UPRR CROSSING SAFETY IMPROVEMENTS PROJECT – FIBER OPTIC CABLE RELOCATION AGREEMENT

RECOMMENDED ACTION(S):

1. Appropriate \$6,500 from our unappropriated Traffic Impact Fee Fund for this work.
2. Authorize the City Manager to Execute a Relocation Agreement, with costs in the amount of \$6,090, with Qwest Communications Corporation (QCC) for the Main Avenue/UPRR Crossing Safety Improvements Project.

EXECUTIVE SUMMARY: This agreement is to provide the relocation of fiberoptics ductlines or for the addition of split steel to protect them during the construction of the City's improvements to be made as a part of the Main Avenue/UPRR Crossing Safety Improvements Project.

QCC's fiberoptics ductlines are on the Railroad Right of Way. Currently, an easement agreement exists between the Union Pacific Railroad and QCC. QCC installed its facilities within the rail corridor pursuant to the easement agreement. Under this agreement, the Railroad and any third parties subsequently granted rights by the Railroad to construct in and around their facilities must take certain precautions and bear the expense of any relocation or protection that may be necessary. The City Attorney has reviewed and, after consultation with QCC, made appropriate revisions to the agreement.

Previously, the Council has approved the contract for the preparation of the plans and specifications, and approved an agreement with UPRR for the purchase of additional right-of-way and installation of signals and concrete at-grade panels. Finally, the Council approved a contract for the construction of all of the improvements, including the City storm drain system, water line connection, and UPRR improvements and site improvements.

The approved costs of the design work, the UPRR elements of the project, and the construction contract, including a 5% contingency, come to a total of \$610,000. Work to be performed by QCC shall add \$6,090 to the overall cost, for a new total of \$616,090.

FISCAL IMPACT: The cost of the work done by QCC under this agreement was not anticipated in our project budget; it is recommended that Council approve an appropriation of \$6,500 from the unappropriated Traffic Impact Fee Fund balance into project #524000 for this work.

Agenda Item # 8

Prepared By:

Contract Project Mgr.

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *November 5, 2003*

APPROVAL OF ADDITIONAL PG&E FEES FOR AQUATICS CENTER

RECOMMENDED ACTION(S): Approve payment of additional fees to PG&E for the Aquatics Center in the amount of \$27,542.78 for a total of \$219,135.52

EXECUTIVE SUMMARY: As a part of the development of the Aquatics Center, it was necessary to pay PG&E to provide gas & electric service to the project as well as underground the overhead utilities along Barrett Avenue. Staff made application to PG&E this past March. They had completed their engineering and cost estimating and began construction in late October. Shortly thereafter, it was determined that PG&E had made an error in the design of the undergrounding portion of the work along Barrett Avenue. The typical design is to install all junction boxes below grade, or underground. The design they were about to install included two 3' by 6' boxes above grade. As we require all other commercial developments to install these junction boxes below grade, it is appropriate that the City do the same. Fortunately, installation and therefore removal of the above ground structures was avoided. The revised fees breakdown as follows:

Electric Service	\$ 14,403.81
Gas Service	\$ 19,710.93
Undergrounding	\$126,127.00
Street Lights	\$ 1,588.00
Trench Costs	\$ 29,763.00
Additional UG	<u>\$ 27,542.78</u>
Revised TOTAL	\$219,135.52

Since the City of Morgan Hill has already paid the original \$191,592.74, the additional amount due is \$27,542.78.

FISCAL IMPACT: The above revised total amount is included in the adopted project budget of \$13,900,000. No additional funding is required.

Agenda Item # 9

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

APPROVE PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY

RECOMMENDED ACTION(S): Approve payment in the amount of \$60,608.90 for vegetation abatement in FY02/03.

EXECUTIVE SUMMARY:

This payment is pursuant to our contract with the County Fire Marshall for hazardous vegetation abatement on City owned property. The work performed by the County includes discing and handwork on the City's open space, Assessment District and RDA owned properties. There are approximately 292 acres which require abatement. Per our agreement, the charges for these services include a reduced administrative fee of 75% of the cost of the contractor.

Costs have considerably risen over the past few years but more dramatically this past year. One of the components of the higher costs is the increased handwork and mowing. This is in part due to the new discing ordinance. To meet the Fire Marshall's standards mowing is done more often and is more costly than discing. Also, the County's contractor is entitled to an annual increase as published in the CPI.

Last, has been the ability to more accurately account for City owned parcels than in the past. This is reflected in the Jackson Oaks area. In an effort to cut costs this next year staff is working with the County Fire Marshall's Office to re-evaluate how much total acreage is needed to be cut for the firebreaks in the Jackson Oaks area.

FISCAL IMPACT:

Funds are appropriated in the current year in our Parks, Landscape & Lighting, and Redevelopment budgets for the abatement of vegetation on City owned parcels.

Agenda Item # 10

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

AWARD OF CONTRACT FOR SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE III 2003-2004 PROJECT

RECOMMENDED ACTION:

1. Award contract to Monterey Peninsula Engineering, Inc. for the construction of the Sidewalk, Curb & Gutter Removal and Replacement 2003-2004 Phase III Project in the amount of \$65,140.
2. Authorize expenditure of construction contingency funds not to exceed \$6,514.

EXECUTIVE SUMMARY:

This project provides for the replacement of damaged curb/gutter and sidewalk at various locations throughout the City, as shown in the attached location maps.

The bid opening was held on October 9, 2003 and the bids received are as listed below. The low bidder has worked on the various projects with the City of Morgan Hill and we have been satisfied with their work. Staff recommends award of the contract to Monterey Peninsula Engineering, Inc. This project shall begin in December, 2003 and shall be completed by the end of January, 2003, pending weather conditions.

Monterey Peninsula Engineering, Inc.	\$ 65,140
JJR Construction, Inc.	\$ 84,999
Wattis Construction Co.	\$ 95,595

FISCAL IMPACT: The total contract cost for this project is \$71,654 which includes a 10% contingency. Project will be funded through the 03/04 Street Maintenance Budget (Account number 202-42231-6100).

Agenda Item # 11

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

EMERGENCY AUTHORIZATION FOR SEWER LINE REPAIR AT 2983 HOLIDAY COURT

RECOMMENDED ACTION(S):

1. Adopt attached resolution declaring the need for emergency expenditure for repair work to damaged sewer line at 2983 Holiday Court.
2. Approve funding the amount of \$18,000 for this emergency work.

EXECUTIVE SUMMARY: As Council is aware, earlier this month there was a sewer spill that reached Anderson Lake from a city manhole near 2983 Holiday Court caused by a defect in our sewer main on this lot. All responsible agencies were notified and the City followed its emergency spill clean-up procedures to remediate the spill when it was discovered.

In subsequent review of the cause of the spill we find that through construction activity on the subject lot, most likely during construction of the home and subsequent lot improvements between 1997 and 2002, damaged the City's sewer which caused the sewer spill earlier this month.

City staff has been field verifying the condition of the sewer line daily since the spill to make sure it does not occur again, and we are now in a position of needing to move forward with emergency sewer line repair. Staff has solicited a time and materials proposal from a local contractor, and we believe for an expense of approximately \$18,000 all necessary repairs will be made on the line.

FISCAL IMPACT: Sufficient funds exist in our CIP budget for this repair under Sanitary Sewer Rehabilitation, Project #302093.

Agenda Item # 12

Prepared By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING THE NEED FOR AN EMERGENCY EXPENDITURE FOR REPAIR OF SEWER LINE AT 2983 HOLIDAY COURT IN ACCORDANCE WITH PUBLIC CONTRACT CODE 20168

WHEREAS, an emergency currently exists since an offset in the sewer line at 2983 Holiday Court resulted in a raw sewage spill into Lake Anderson on October 2, 2003; and

WHEREAS, it has now been determined that the structural integrity of the sewer line has deteriorated to the point where immediate repair is necessary to avoid a subsequent spill; and

WHEREAS, any further sewer spill would create great and extraordinary public calamity by exposing the residents of the City and adjacent unincorporated area to the potential threat of raw sewage contamination; now

THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill does resolve, determine and order the following:

1. The sewer line at 2983 Holiday Court currently is in need of emergency repair to prevent another raw sewage release into Lake Anderson.
2. The immediate expenditure of public funds is necessary to safeguard life, health and property.
3. The sum of \$18,000 is hereby approved for expenditure for emergency sewer line repair.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of November, 2003, by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

VOLUNTEER CENTER OF SILICON VALLEY AND CITY OF MORGAN HILL MEMORANDUM OF UNDERSTANDING

RECOMMENDED ACTION(S):

Authorize the City Manager to execute a Memorandum of Understanding (MOU) on behalf of the City of Morgan Hill with the Volunteer Center of Silicon Valley to support, in conjunction with the Office of Emergency Services and other City staff, a processing center for spontaneous volunteers responding to a catastrophic disaster in the Santa Clara Valley, within the City of Morgan Hill at a site or facility to be determined.

EXECUTIVE SUMMARY:

The Santa Clara County Emergency Manager's Association and the Volunteer Center of Silicon Valley (VCSV) have developed a partnership to strengthen the coordination and delivery of services to manage spontaneous volunteers throughout Silicon Valley in times of catastrophic disasters and extended emergencies.

Spontaneous volunteers are volunteers who are not pre-registered or pre-trained but come forward to help after an emergency or disaster.

Within the City of Morgan Hill, these spontaneous volunteers would normally be processed by a Volunteer Center, established after the Emergency Operations Center (EOC) is activated, at a site or city facility to be determined.

The Volunteer Center of Silicon Valley has offered to support local jurisdictions with personnel to staff or augment the local jurisdiction's Volunteer Center, if the flood of spontaneous volunteers is significant and assistance could be beneficial to the City.

In the case of an extended period emergency or disaster, this assistance could prove to be quite beneficial to the City staff.

FISCAL IMPACT: Any costs incurred in the operations of the spontaneous volunteer center, with or without support of the Volunteer Center of Silicon Valley (VCSV), would normally be reimbursable at rates established by the Federal Emergency Management Agency (FEMA) under current directives. Additional costs incurred by the presence of personnel of the VCSV would fall under the FEMA directives.

Agenda Item #13

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

Agenda Item # 14

Prepared By:

(Staff Person)

Approved By:

(Department Head)

Submitted By:

City Manager

MEDICAL RESERVE CORPS (MRC) CONTINUATION GRANT (FY-03) FROM THE OFFICE OF THE SURGEON GENERAL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

RECOMMENDED ACTION(S):

Approve and accept this Continuation Grant of \$50,000 For FY-03 for the Morgan Hill Medical Reserve Corps Operations, Training and Equipment.

EXECUTIVE SUMMARY:

1. In November, 2002, the Office of the Surgeon General awarded the City of Morgan Hill a grant for \$41,800 to establish a Medical Reserve Corps, only 1 of 42 selected in the USA.
2. The City Council accepted the proposed \$141,800 three year MRC Grant on March 19, 2003.
4. In July, 2003, The City applied for the FY-03 Non-Competitive Continuation Grant of \$50,000.
5. On September 30, 2003, the Office of the Surgeon General advised the City of Morgan Hill had been selected to receive a Continuation Grant for FY-03 of \$50,000.
6. The Office of Emergency services has been recruiting volunteers, both professional medical personnel and lay volunteers for this unit. Selected equipment (tents, medical supply kits, generators, and a 6 x 12 equipment trailer have been ordered and are being received at this time.)
7. This second grant will pay for personnel training, additional medical and support equipment, and other related expenses.
8. The stated goals of the Medical Reserve Corps are to have two (2) trained field teams ready to provide limited but essential medical treatment to local victims of catastrophic disasters and Mass Casualty Incidents in support of the Professional First Responders (Police/Fire/Medical/Hazardous Materials/Emergency Services.)

FISCAL IMPACT:

The City of Morgan Hill received \$41,800 in the original USOSG Grant and \$50,000 in this follow-on Continuation Grant. No guarantee of future funding exists but the program envisioned three (3) Fiscal Year's funding not to exceed \$50,000 each year.



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

Agenda Item # 15

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

2003-04 CITY WORKPLAN, FIRST QUARTER UPDATE

RECOMMENDED ACTION:

Accept First Quarter Update of the 2003-04 Workplan

EXECUTIVE SUMMARY:

On July 23, 2003, the Council adopted the 2002-03 City Workplan. The attached report shows the status of each of the 82 projects in the workplan.

When developing the workplan, departments estimate the time required to attain project milestones. These estimates may not be met for a variety of reasons, including reduced staffing and the addition of higher-priority activities over the course of the year. At this time, 80% of all workplan projects are projected to be completed on time or ahead of schedule, 17% of the projects are expected to be completed late, and 2% of the projects are on hold.

Projects that will not be completed according to the adopted schedule are:

- Moving the Acton Museum and Farmhouse
- Police Station Request for Proposal Process
- Economic Development Audit
- Downtown Design Plan
- Implementation of Information Technology Management Study Recommendations
- Customer Surveys in the Building Division and the Finance Department
- Completion of the Urban Gateway Plan and Updating of the Design Review Ordinance and Architectural Review handbook
- Completion of Zoning Code Amendments for Consistency with the General Plan Update
- Completion of the Monterey Road Traffic Study and Improvement Plan
- Amendment of the General Plan and Zoning in the Downtown Area
- Review of Finance Department Record Retention Requirements to Improve Efficiency
- Development of a Local Government Day for Live Oak students
- Adoption of New Personnel Rules
- Construction of the Boys Ranch Reservoir

In addition, two projects have been placed on hold. Assistance to Sinaloa Restaurant owners is now on hold since the owner plans to operate at a new location in the near future. A Recreation project to work with a non-profit organization to curate exhibits at the Community and Cultural Center is also on hold, as a partner organization for this project has not been identified.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

Agenda Item # 16

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1639, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1437 WHICH ADOPTED A PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT PROJECT WITH COMMON OPEN SPACE AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DR. AND SAN VICENTE CT. THE AMENDMENT INCLUDES THE ADOPTION OF A NEW PRECISE DEVELOPMENT PLAN FOR FIVE SINGLE-FAMILY HOMES AND ONE GRANNY UNIT (APNs 817-60-062 thru -067) (ZA-02-12: NINA LANE-CHEN)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1639, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On October 15, 2003, the City Council Introduced Ordinance No. 1639, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1639, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1437 WHICH ADOPTED A PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT PROJECT WITH COMMON OPEN SPACE AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DR. AND SAN VICENTE CT. THE AMENDMENT INCLUDES THE ADOPTION OF A NEW PRECISE DEVELOPMENT PLAN FOR FIVE SINGLE-FAMILY HOMES AND ONE GRANNY UNIT (APNs 817-60-062 thru -067) (ZA-02-12: NINA LANE-CHEN)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped April 1, 2003, on file in the Community Development Department, entitled "San Vicente Estates" prepared by Hanna & Brunetti. These documents, as amended by Section 6 of this Ordinance and by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** The precise development plan shall be amended to increase the lot depth of Lots 1 and 2 to a minimum of 80.5 feet, as measured along the adjoining property line.
- SECTION 7.** Approval of the San Vicente Estates RPD and precise development plan shall allow the following deviations from the R-1(12,000) zoning district:
- a. Lot 1 – A lot depth of 80.5 feet is allowed. A front yard setback of 24.5 feet is allowed.
 - b. Lot 2 – A lot depth of 80.5 feet is allowed. A front yard setback of 19.5 feet (as measured from the Juan Hernandez Drive property line) is allowed.

SECTION 8. With the exception of the deviations allowed under Section 7 of this Ordinance, buildout of the San Vicente Estates project shall comply with the site development standards of the R-1(12,000) zoning district. Any additions/modifications to the approved building plans shall also comply with the site development standards of the R-1(12,000) zoning district.

SECTION 9. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 10. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of October 2003, and was finally adopted at a regular meeting of said Council on the 5th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1639, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

Agenda Item # 17

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1640, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-02-01: NINA LANE – CHEN (APNs 817-60-062 thru -067) (DA-02-11: NINA LANE - CHEN)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1640, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On October 15, 2003, the City Council Introduced Ordinance No. 1640, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1640, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-02-01: NINA LANE – CHEN (APNs 817-60-062 thru -067) (DA-02-11: NINA LANE - CHEN)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 02-37, adopted May 14, 2002, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMP-02-01: Nina Lane – Chen	5 allotments (three detached, two attached); Fiscal Year 2003-04

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of October 2003, and was finally adopted at a regular meeting of said Council on the 5th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1640, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

Agenda Item # 18

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1641, NEW SERIES, AS AMENDED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING (ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT/ATTACHED HOUSING)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1641, New Series, amending Sections 17 and 17a (minor wording changes), and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On October 15, 2003, the City Council Introduced Ordinance No. 1641, New Series, as amended, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. No budget adjustment necessary.

ORDINANCE NO. 1641, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL ALLOWING MODIFIED SETBACK
DWELLINGS IN RESIDENTIAL PROJECTS DUE TO
CONSTRUCTION LIABILITY INSURANCE ISSUES
SURROUNDING OWNERSHIP ATTACHED HOUSING
(ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT
AMENDMENT/ATTACHED HOUSING)**

WHEREAS, a goal of the Morgan Hill General Plan is to provide “*a variety of housing types and densities available to all residents*”; and

WHEREAS, a goal of the Morgan Hill Affordable Housing Strategy is to provide a variety of housing for all income levels, specifically housing for moderate income levels; and

WHEREAS, attached housing, including BMR units, provide housing opportunities for all income levels, but specifically for low and moderate income levels; and

WHEREAS, during the Measure P process, a majority of the current and Measure P approved projects committed to provide attached housing; and

WHEREAS, Measure P approved projects are required to adhere to a strict development schedule during the Fiscal Year for which allotments were awarded; and

WHEREAS, allotments awarded for Fiscal Year 2003-04 are facing impending Measure P deadlines; and

WHEREAS, construction liability insurance for projects with ownership attached housing is no longer available to many local subcontractors; and

WHEREAS, construction liability insurance for projects with ownership attached housing has become increasingly difficult to obtain and cost prohibitive for local developers; and

WHEREAS, the insurance issue threatens to impede Morgan Hill developers from fulfilling their Measure P commitments to provide below market rate (BMR) housing and attached housing in Morgan Hill; and

WHEREAS, immediate action is needed to address the attached housing issue to prevent delays in the entitlement and construction process for projects with Measure P allotments; and

WHEREAS, the Home Builders’ Association is working with the state legislature to develop solutions to the insurance crisis relating to attached housing; although, it is not likely that a solution will be obtained in the near future; and

WHEREAS, local developers have requested the enactment of an ordinance to allow the construction of modified setback dwellings, or dwellings physically separated but architecturally connected by a design element to give the appearance of attachment; and

WHEREAS, modified setback dwellings will provide greater architectural continuity in neighborhoods consisting primarily of detached dwellings; and

WHEREAS, the separation of attached units will allow for the addition of architectural features such as windows, which will enhance the appearance of the homes and improve the function of the interior spaces; and

WHEREAS, the City has reviewed all other alternatives to the ordinance, including a no action alternative, and has determined that an ordinance allowing modified setback dwellings is the only feasible solution to prevent significant delays in the construction of new housing in Morgan Hill; and

WHEREAS, in the event changes in the insurance industry occur as a result of the efforts of the Home Builders' Association, this Ordinance is proposed to remain in effect for a period of twenty-four (24) months; and

WHEREAS, such request was considered by the City Council at their regular meeting of October 15, 2003, at which time the City Council approved the ordinance; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Ordinance is consistent with the RPD, Residential Planned Development Overlay District of the Zoning Ordinance, which is intended to permit and encourage flexibility of site planning, with appropriate safeguards and controls for residential development, by allowing variations from the standards specified elsewhere in Division I of Title 18 of the Municipal Code. All projects containing modified setback dwellings will be required to have a Residential Planned Development (RPD) Overlay Zoning.

SECTION 2. The Ordinance is consistent with the General Plan. Construction of modified setback dwellings allows developers to build a variety of housing for all income levels, as required by the General Plan.

SECTION 3. The Ordinance is consistent with Measure P, and will not result in the reduction of points for Measure P projects. The definition of attached housing will be amended to include modified setback dwellings; therefore, the number of housing types provided by a project will not be altered by this Ordinance. Developers will be required to provide an equal number of modified setback dwellings in their respective projects as identified in the Measure P application as attached housing.

SECTION 4. The City Council hereby finds that the change from an attached dwelling to a modified setback dwelling is a minor change under the provisions of paragraph 9 of the standard residential development agreement.

SECTION 5. The City Council hereby finds that the Ordinance does not violate the general spirit or intent of the General Plan, Zoning Ordinance, or Residential Development Control System, nor does it violate previously approved project entitlements including RPD zoning, subdivision, development agreement and architectural & site review approvals.

SECTION 6. A comprehensive ordinance to allow the use of modified setback dwellings is needed for the following reasons, as well as the recitals above:

- a. Measure P projects are subject to strict development schedules which require dwelling units to be built within a specified timeframe. Requiring developers to go through the standard review process to amend City standards, project plans and project development agreements to allow modified setback dwellings would result in lengthy delays in the project.
- b. Project delays could result in significant delays in the production of housing, both attached and detached, in Morgan Hill.
- c. Delays in the production of housing would delay the City from fulfilling the Affordable Housing Strategy and General Plan goal to provide its fair share of housing for all income levels.

SECTION 7. Section 18.04.154 of the Morgan Hill Municipal Code is hereby amended to read as follows:

18.04.154 Dwelling, single-family, attached.

“Single-family attached dwelling” means a dwelling attached to another dwelling on at least 50 percent of the length of the attached side of the building, sometimes called a townhouse, duet or row house. One or more walls extend from foundation to roof, which separate it from adjoining structures and form a property line. *Single-family attached dwellings also include modified setback dwellings as defined by the Morgan Hill Municipal Code.*

SECTION 8. Section 18.04.156 is hereby added to the Morgan Hill Municipal Code as follows:

18.04.156 Dwelling, single-family, modified setback.

A “modified setback dwelling” is defined as follows:

A. A dwelling physically separated from an adjacent dwelling on a separate lot of record by a minimum of three feet and a maximum of six feet, and architecturally connected by a design element such as a wing wall, trellis, or fireplace, to give the appearance of attachment; or

B. A dwelling physically separated from an adjacent dwelling on a separate lot of record whereby the adjacent lots are designed with an alternative lot configuration, such as a Z-lot or off-set property lines, and the units are situated such that they give the appearance of attachment from the public right-of-way.

SECTION 9. Section 18.04.272 is hereby added to the Morgan Hill Municipal Code as follows:

18.04.272 Lot, Z.

A “Z-lot” is a lot in which the interior side property line(s) form the letter ‘z.’

SECTION 10. This Ordinance hereby allows developers to build modified setback dwellings in lieu of standard attached dwellings, subject to the following eligibility criteria:

- a. Only Measure P allotments awarded for Fiscal Year 2004-05 and earlier and allotments for which building permits are issued by June 30, 2005 are eligible for the modified setback dwellings, except as provided in Sections 15 through 19 of this Ordinance.
- b. Evidence shall be provided to the satisfaction of the City that the developer is unable to obtain construction liability insurance specifically due to the inclusion of attached housing in the project.

SECTION 11. Modified setback dwellings shall be designed to comply with the following design standards:

- a. Duet units – a zero side yard setback is allowed on one side of one of the duet units.
- b. Single-family Attached Housing Consisting of Three Units - zero side yard setbacks are allowed on both sides of the center unit and on the outer side yards of the end units.
- c. Single-family Attached Housing Consisting of Four or More Units - lots for each unit shall be designed large enough to accommodate a zero setback on one side and a minimum three-ft setback on the other side.
- d. Minimum separation between dwellings shall be three feet.
- e. Maximum separation between dwellings shall be six feet, except as allowed under subparagraph (f), below.
- f. A maximum separation between adjacent dwellings shall not be required for modified setback dwellings on alternative lot configurations, such as z-lots or lots with off-set property lines, provided that the adjacent dwellings give the appearance of attachment from the public right-of-way.
- g. Side yard setbacks adjacent to single-family detached dwellings shall be a minimum of five feet.
- h. The side yard setback along the side street property line of a corner lot shall be a minimum of 15 feet.

- i. In no case shall front or rear yard setbacks be reduced to less than 20 feet in depth, unless previously approved by the City Council as part of an RPD Overlay District.
- j. Architectural treatment, such as a wing wall, trellis, staggered fireplaces along the separated wall of both units, or other similar treatment, shall be provided in between modified setback dwellings to give the appearance of attachment, although, the units will be physically detached.
- k. Should a fence be constructed between the modified setback dwellings, a gate shall be provided allowing access from the front yard to the side yard area.
- l. Eaves and overhangs may encroach over property lines, subject to compliance with building code standards and provided appropriate easements and Covenant, Conditions & Restrictions (CC&Rs) are recorded.
- m. A deed restriction shall be recorded over every modified setback lot prohibiting future building additions on either side of the homes, unless the additions comply with the site development standards of the underlying zoning district.
- n. For adjacent dwellings with minimum three-ft and maximum six-ft separations, primary access and exclusive use of the adjoining side yard area shall be granted to the property owner with the greater side yard width. In cases of equal side yard widths, the RPD shall identify to which property owner primary access and exclusive use is granted. Secondary access shall be granted to the adjacent property owner for maintenance of the exterior wall. An easement shall be recorded over the adjoining side yard area granting access to the adjacent property owner for maintenance of the exterior wall, and CC&Rs shall be recorded granting the exclusive and reasonable use of the adjoining side yard area to the appropriate property owner, with restrictions to minimize potential conflicts.
- o. A closed pipe system providing positive drainage shall be provided between modified setback dwellings.
- p. Rain gutters connected to a closed pipe drainage system shall be provided for all modified setback dwellings. CC&Rs shall be recorded requiring property owners to maintain rain gutters to minimize impacts to the adjacent property(ies).
- q. Modified setback dwellings shall be designed in full compliance with 2001 Uniform Building Codes.
- r. All projects containing modified setback dwellings shall have an approved RPD Overlay Zoning.

SECTION 12. The setback standards outlined in this Ordinance supersede the setback provisions of the current Morgan Hill Zoning Ordinance for the duration of the Ordinance. All other site development standards of the current Zoning Ordinance, including but not limited to density, lot coverage, building height and open space requirements, shall still apply, except as otherwise permitted under RPD variations approved by the City Council.

SECTION 13. Projects eligible to incorporate modified setback dwellings that have obtained architectural and site review approval prior to the enactment of this Ordinance, shall be subject to architectural review and approval by the Architectural Review Board (ARB) Subcommittee.

SECTION 14. For projects eligible to incorporate modified setback dwellings that have obtained RPD approval prior to the enactment of this Ordinance, the Council hereby authorizes Planning Staff to review and approve amendments to the established precise development plans to incorporate the modified setback dwellings.

SECTION 15. This Ordinance may be extended to allow modified setback dwellings for Measure P allotments awarded for Fiscal Year 2005-06 and allotments for which building permits are issued by June 30, 2006, subject to the approval of the City Council.

SECTION 16. Projects with Measure P allotments awarded for Fiscal Year 2004-05 and allotments for which building permits are issued by June 30, 2005 shall be subject to the requirements listed below. Should the City Council extend this Ordinance, allotments awarded for Fiscal Year 2005-06 and allotments for which building permits are issued by June 30, 2006 shall also be subject to the following requirements:

- a. Projects shall adhere to the standard Measure P development schedule. No extensions of time shall be granted due to delays resulting from insurance issues, unless otherwise approved by the City Council.
- b. Projects shall be subject to the standard development review process, including RPD zoning, subdivision, development agreement and architectural & site review approval. All development applications shall include plans for both attached dwellings and modified setback dwellings, to be reviewed and approved by the appropriate reviewing bodies.

SECTION 17. Future Measure P applications shall be subject to the following requirements:

- a. Applications may include plans for attached dwellings or modified setback dwellings. For the purposes of the 'Housing Types' Category, modified setback dwellings are attached dwellings.
- b. Project development agreements may include language which would allow the use of modified setback dwellings in the subject project should the Council finds that there continues to be a need for this type of housing product, and that the need is likely to exist at the time the Developer is required to pull building permits and commence construction.

- SECTION 18.** This Ordinance shall automatically expire and be of no further force and effect at the end of twenty-four (24) months after the date of enactment, unless extended by the City Council with appropriate findings and resolutions.
- SECTION 19.** At the end of twelve (12) months after the enactment of this Ordinance, the Planning Commission shall hold hearings to review the progress and status of the modified setback dwellings. The Planning Commission shall then forward a recommendation to the City Council to either extend or terminate this Ordinance.
- SECTION 20.** The Council, upon appropriate findings, may revoke this Ordinance prior to the expiration of the Ordinance. If no action is taken by the City Council, the Ordinance shall remain in effect until its expiration date.
- SECTION 21.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 22.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of October 2003, and was finally adopted at a regular meeting of said Council on the 5th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1641, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – OCTOBER 24, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 4:00 P.M.

ROLL CALL ATTENDANCE

Present: Mayor Kennedy and Mayor Pro Tempore Chang
Absent: Council Members Carr, Sellers, and Tate.

DECLARATION OF POSTING OF AGENDA

The meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

MEETING CANCELLED – TOUR OF AQUATICS CENTER CONSTRUCTION SITE

The meeting was cancelled due to a lack of a quorum. However, Mayor Pro Tempore Chang and Mayor Kennedy took the tour of the aquatics center, led by Aquatics Construction Manager Glenn Ritter

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK



CITY COUNCIL & REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: NOVEMBER 5, 2003

FORMATION OF MORGAN HILL FINANCING AUTHORITY

RECOMMENDED ACTIONS:

1. As the Redevelopment Agency Board of Directors, adopt the Resolution approving a joint exercise of powers agreement between the Redevelopment Agency and the City of Morgan Hill
2. As the City Council, adopt the Resolution approving a joint exercise of powers agreement between the Redevelopment Agency and the City of Morgan Hill

EXECUTIVE SUMMARY:

In order to refinance an existing \$1.4 million water facilities loan between the City and the California Statewide Communities Development Authority, Bond Counsel has determined that the most practical and efficient manner for this refinancing to proceed involves the formation of the Morgan Hill Financing Authority through a joint exercise of powers agreement between the City and Redevelopment Agency, which would act as a conduit for the financings. Staff plans to bring documents to accomplish this refinancing, along with proposed by-laws for the Financing Authority, to the City Council and Financing Authority Board on November 19.

Under California Law, two public entities (such as the City and its Redevelopment Agency) can form a separate public entity, known as a joint powers authority. A joint powers authority has broad financing powers, including the power to make loans to cities, redevelopment agencies and other local governmental agencies (the California Communities Statewide Development Authority is a joint powers authority, and it issued bonds and made a loan to the City in 1993 to refinance the City's Safe Drinking Water Loan from the State of California).

A joint powers authority also has other powers which may prove useful in future for other City or Redevelopment Agency financings. For example, joint powers authority has the power to issue bonds to finance the construction of public buildings such as the proposed new police facility, and the power to lease such a facility to the City. The City's annual lease payments would equal the annual debt service on the bonds issued to finance the police facility.

The Morgan Hill Financing Authority would be such a joint powers authority and would be created by the adoption of resolutions of the City Council and the Agency Board which approve a joint exercise of powers agreement. The joint exercise of powers agreement provides the basic powers of the Financing Authority and also provides that the City Council would act as the Authority Commission (the governing board) of the Financing Authority and that City officers would hold comparable positions with the Financing Authority.

FISCAL IMPACT:

There is only a de minimus fiscal impact to the City, and no fiscal impact to the Redevelopment Agency resulting from the formation of the Morgan Hill Financing Authority. The initial costs of forming the Authority will be financed through the refinancing of the water facilities loan, since this is a necessary step to accomplish that refinancing.

Agenda Item # 20

Prepared By:

Finance Director

Submitted By:

**City Manager/
Executive Director**

RESOLUTION NO. MHRA-

A RESOLUTION OF THE MORGAN HILL REDEVELOPMENT
AGENCY APPROVING A JOINT EXERCISE OF POWERS
AGREEMENT BETWEEN THE MORGAN HILL REDEVELOPMENT
AGENCY AND THE CITY OF MORGAN HILL

RECITALS:

A. The Joint Exercise of Powers Act, California Government Code Section 6500, et seq. (the "Act"), provides that public agencies by agreement may jointly exercise any power common to the contracting parties.

B. The Morgan Hill Redevelopment Agency (the "Agency") and the City of Morgan Hill (the "City") are "public agencies" within the meaning of that term under Section 6502 of the Act.

C. Among the common powers of the Agency and the City are the power to borrow money; the power to acquire and dispose of real and personal property; the power to pay for the cost of publicly owned improvements; and the power to accept financial assistance from various public sources.

D. The Agency desires to enter into the Agreement (as defined herein) in furtherance of the Act.

NOW THEREFORE, THE MORGAN HILL REDEVELOPMENT AGENCY
HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The form of Joint Exercise of Powers Agreement (the "Agreement"), dated as of November 5, 2003, by and between the Agency and the City, is hereby approved, and the Chairman of the Agency is hereby authorized and directed, for and on behalf of the Agency, to execute and deliver the Agreement in substantially the form on file with the Secretary of the Agency and presented to this meeting, with such changes therein as the Chairman of the Agency may approve, such approval to be conclusively evidenced by his execution and delivery thereof.

Section 2. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED by the Morgan Hill Redevelopment Agency at a Special Meeting held on the 5th Day of November, 2003 by the following vote:

AYES: **AGENCY MEMBERS:**
NOES: **AGENCY MEMBERS:**
ABSTAIN: **AGENCY MEMBERS:**
ABSENT: **AGENCY MEMBERS:**

🏛️ CERTIFICATION 🏛️

I, **IRMA TORREZ, AGENCY SECRETARY**, do hereby certify that the foregoing is a true and correct copy of Resolution No. MHRA- adopted by the Morgan Hill Redevelopment Agency at a Special Meeting held on November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, AGENCY SECRETARY

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL APPROVING A JOINT EXERCISE OF POWERS
AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND
THE MORGAN HILL REDEVELOPMENT AGENCY

RECITALS:

A. The Joint Exercise of Powers Act, California Government Code Section 6500, et seq. (the "Act"), provides that public agencies by agreement may jointly exercise any power common to the contracting parties.

B. The Morgan Hill Redevelopment Agency (the "Agency") and the City of Morgan Hill (the "City") are "public agencies" within the meaning of that term under Section 6502 of the Act.

C. Among the common powers of the Agency and the City are the power to borrow money; the power to purchase bonds, notes or other obligations; the power to acquire and dispose of real and personal property; the power to pay for the cost of publicly owned improvements; and the power to accept financial assistance from various public sources.

D. The City Council desires to enter into the Agreement (as defined herein) in furtherance of the Act.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF
MORGAN HILL HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS AS
FOLLOWS:

Section 1. The form of Joint Exercise of Powers Agreement (the "Agreement"), dated as of November 5, 2003, by and between the City and the Agency, is hereby approved, and the Mayor of the City Council is hereby authorized and directed, for and on behalf of the City, to execute and deliver the Agreement in substantially the form on file with the City Clerk and presented to this meeting, with such changes therein as the Mayor of the City Council may approve, such approval to be conclusively evidenced by his execution and delivery thereof.

Section 2. The City Clerk shall cause a copy of the Agreement to be filed with the California Secretary of State pursuant to Section 6503.5 of the Act, and shall cause to be filed with the California Secretary of State and with the County Clerk of the County of Santa Clara the information required by Section 53051 of the Government Code of the State of California.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of November, 2003, by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

JOINT EXERCISE OF POWERS AGREEMENT

This Joint Exercise of Powers Agreement is dated as of November 5, 2003, and is made by and between the City of Morgan Hill and the Morgan Hill Redevelopment Agency.

RECITALS:

A. The Joint Exercise of Powers Act, being California Government Code Section 6500, et seq., provides that public agencies by agreement may jointly exercise any power common to the contracting parties.

B. The City and the Agency are “public agencies” within the meaning of that term under Section 6502 of the Joint Powers Act.

C. The common powers of the City and the Agency include the power to borrow money; the power to purchase bonds, notes or other obligations; the power to acquire and dispose of real and personal property; the power to pay for the cost of publicly owned improvements; and the power to accept financial assistance from various public sources. The City and the Agency desire to jointly exercise certain powers common to the parties, as set forth herein, including the foregoing and including the expansion, upgrading and improvement of public capital improvements.

D. By adding the provisions of Article 4 to the Joint Powers Act, the State Legislature has provided assistance to reduce local borrowing costs, to help accelerate the construction, repair, and maintenance of public capital improvements, and to promote greater use of existing and new financial instruments and mechanisms.

E. There is a need within the City, consistent with the need described in the declarations of the State Legislature set forth in Article 4 of the Joint Powers Act, to expand, upgrade, and otherwise improve the public capital facilities of local government necessary to support the rehabilitation and construction of residential and economic development. The needs of local government for financing these facilities greatly exceed the amount of funds available from existing state, local, and federal sources.

F. Pursuant to Article 4 of the Joint Powers Act, an authority created pursuant to Article 1 of the Joint Powers Act may purchase bonds issued by any local agency at a public or private sale and such bonds may be held by the authority or sold to public or private purchasers at public or negotiated sales.

G. Pursuant to Article 4 of the Joint Powers Act, an authority created pursuant to Article 1 of the Joint Powers Act has additional powers under the Joint Powers Act, including the power to issue bonds to pay the cost of any public capital improvement, and the power to make secured or unsecured loans to a local agency, including the City and the Agency, in connection with the financing of public capital improvements and to refinance indebtedness incurred in connection with public capital improvements undertaken and completed.

H. The City and the Agency desire to enter into this Agreement in furtherance of the Joint Powers Act, including Article 4 thereof.

NOW, THEREFORE, the City and the Agency agree as follows:

Section 1. Definitions. As used herein, the following terms shall have the meaning ascribed thereto, unless the context requires otherwise.

“Agency” or “Redevelopment Agency” means the Morgan Hill Redevelopment Agency, a public body, corporate and politic, duly organized and validly existing pursuant to the Constitution and laws of the State.

“Agency Board” means the governing body of the Agency.

“Agreement” means this Joint Exercise of Powers Agreement.

“Article 1” means Article 1 of the Joint Powers Act, commencing with Section 6500.

“Article 2” means Article 2 of the Joint Powers Act, commencing with Section 6540.

“Article 4” means Article 4 of the Joint Powers Act, commencing with Section 6584.

“Authority” means the Morgan Hill Financing Authority, a joint powers authority duly organized and validly existing pursuant to the Constitution and laws of the State.

“Authority Commission” means the governing body of the Authority, which shall be constituted as provided in Section 5 hereof.

“Authority Treasurer” means the Treasurer of the Agency.

“Bond Purchase Agreement” means a contractual agreement executed between the Authority and a Local Agency whereby the Authority agrees to purchase Bonds of the Local Agency. In circumstances which the Authority is exercising its powers described in Section 15 hereof, the private purchaser may execute and be a party to such contractual agreement.

“Bonds” means bonds, notes, commercial paper, floating rate, and variable maturity securities, and any other evidences of indebtedness and also includes certificates of participation, lease-purchase agreements or loan agreements.

“Chief Administrative Officer” means the City Manager of the City.

“City” means the City of Morgan Hill and, depending upon the context, may refer to the City as a municipal corporation duly organized and validly existing pursuant to the Constitution and laws of the State, or may refer to the area within the territorial limits of the City.

“City Council” means the City Council of the City.

“Cost” as applied to a Public Capital Improvement or portion thereof financed pursuant to the Joint Powers Act, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a Public Capital Improvements, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings, or structures may be moved; the cost of all machinery and equipment; finance charges; interest prior to, during, and for a period after, completion of that construction, as determined by the Authority; provisions for Working Capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing of any Public Capital Improvement.

“County” means the County of Santa Clara.

“Include”, “Includes” or “Including” means including without limitation.

“Joint Powers Act” means the Joint Exercise of Powers Act, being California Government Code Section 6500, et seq., as amended from time to time.

“Legislative Body” means the legislative or governing body of a Local Agency.

“Local Agency” means the City or the Agency, or an agency or subdivision of the City or the Agency, sponsoring a project of Public Capital Improvements, or any city, county, city and county, authority, district, or public corporation of the State.

“Member” means a Party to this Agreement, which, upon the original execution hereof, are the City and the Agency.

“Party” means any party to this Agreement.

“Public Capital Improvements” means one or more projects specified in Section 6546 of the Joint Powers Act necessary to deliver Local Agency services or otherwise support residential and commercial development.

“Redevelopment Law” means the Community Redevelopment Law, being California Health and Safety Code Section 33000, et seq., as amended from time to time.

“Revenue” means (i) all income and receipts of the Authority from a Bond Purchase Agreement, including the purchase price of Bonds of a Local Agency sold by the Authority to a private purchaser pursuant to Section 15, hereof, (ii) all income and receipts of the Authority derived from any loan agreement or lease agreement with any Local Agency, and (iii) all interest or other income from any investment of any money in any fund or account established for the payment of principal or interest or premiums of Bonds.

“State” means the State of California.

“Working Capital” means money to be used by, or on behalf of, a Local Agency for any purpose for which a Local Agency may borrow money pursuant to California Government Code Section 53852.

Section 2. Purpose of Agreement. The purpose of the Agreement is to establish the Authority and to carry out the intent of the State Legislature as set forth in Article 4 of the Joint Powers Act, namely the financing of Public Capital Improvements and Working Capital whenever there are significant public benefits for taking such action, including (i) demonstrable savings in effective interest rate, bond preparation, bond underwriting, or bond issuance costs; (ii) significant reductions in effective user charges; (iii) employment benefits from undertaking the project in a timely fashion; and (iv) more efficient delivery of services to residential and commercial development.

Section 3. Authorization. The City and the Agency are hereby authorized to jointly exercise any power common to them. Such powers include all those powers set forth in the Recitals hereof.

Section 4. Creation of Authority; Authority as Separate Public Entity. There is hereby created pursuant to the Joint Powers Act a joint powers authority separate and apart from the Parties hereto to be known as the “Morgan Hill Financing Authority.” The Authority shall be a public entity separate from the Parties to this Agreement. The Authority is hereby authorized to exercise all powers common to the Members and the additional powers set forth in Article 4 of the Joint Powers Act.

Section 5. Authority Commission. The City Council shall constitute the governing body of the Authority, which governing body shall be known as the Authority Commission. The Authority Commission shall be vested with all of the rights, powers, duties, privileges and immunities of the Authority.

Section 6. Accountability; Reports; Audits.

A. There shall be strict accountability of all funds and report of all receipts and disbursements of the Authority.

B. The Authority Treasurer shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, except that the Authority Treasurer need not make or contract for the audit in any case where an annual audit of the accounts and records of the Authority by a certified public accountant or public accountant is otherwise made by any agency of the State or the United States only as to those accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 and shall conform to generally accepted auditing standards.

C. When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the Parties and also with the County auditor and shall be sent to any public agency or person in the

State that submits a written request to the Authority. The report shall be filed within 12 months of the end of the fiscal year or years under examination.

D. Any of the costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this Section 6 shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

E. By unanimous request of the Authority Commission, the Authority may replace the annual special audit with an audit covering a two-year period.

Notwithstanding the foregoing provisions of this Section 6 to the contrary, the Authority shall be exempt from the requirement of an annual audit if the financial statements are audited by the State Controller to satisfy federal audit requirements.

Section 7. Power of Authority; Scope and Exercise. The Authority shall have all of the powers common to the Parties and all additional powers set forth in the Joint Powers Act and other statutes applicable to the Authority, and is hereby authorized to do all acts necessary or appropriate for the exercise of such powers.

Section 8. Contributions; Payments and Advances; Use of Personnel, Equipment or Property. The Parties may make contributions from their respective treasuries in furtherance of any or all of the purposes set forth in this Agreement. The Parties may make payments of public funds to defray the cost of any or all of such purposes. The Parties may make advances of public funds for any or all of such purpose. Such advances shall be repaid as may be provided by separate agreement regarding advances which may be entered into between the Authority and the Party or Parties making such advance. Personnel, equipment or property of any of the Parties to this Agreement may be used in lieu of other contributions or advances. The funds may be paid to and disbursed by the Authority, or by any or all of the Parties.

Section 9. Bonding Persons Having Access to Property. The Parties hereby designate the Chief Administrative Officer of the Authority and the Authority Treasurer, and the designee or designees of each of them, as the persons who shall have charge of, handle, or have access to any property of the Authority. Such person or persons shall file an official bond in the amount required by the City for the City office held by such person.

Section 10. Treasurer or Certified Public Accountant; Designation as Depositary; Duties; Auditor. The Treasurer of the Agency shall be the depositary and have custody of all the money of the Authority, from whatever source.

The Authority Treasurer shall do all of the following:

A. Receive and receipt for all money of the Authority and place it in the treasury of the Agency to the credit of the Authority.

B. Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority money so held by him or her.

C. Pay, when due, out of money of the Authority held by him or her, all sums payable on outstanding bonds and coupons of the Authority.

D. Pay any other sums due from the Authority money, or any portion thereof, only upon warrants of the Authority Treasurer.

E. Verify and report in writing on the first day of July, October, January, and April of each year to the Authority and to the Parties, the amount of money he or she holds for the Authority, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

The Authority Treasurer shall draw warrants to pay demands against the Authority when the demands have been approved by the Authority Treasurer.

The Agency Board shall determine charges to be made against the Authority for the services of the Treasurer of the Agency.

Section 11. Services. The City shall provide all of the necessary services to carry out the provisions of this Agreement, including all necessary administrative services. The City shall also provide all necessary personnel, supplies, equipment, office and meeting space, furnishings, and, except as otherwise provided hereunder, shall advance all costs and expenses of the Authority. By separate agreement, the Parties may provide for reimbursement by the Agency to the City for the cost of administrative, overhead and other expenses advanced pursuant to or in furtherance of this Agreement. The City may be reimbursed for the cost of administrative, overhead and other expenses advanced pursuant to this Agreement from the proceeds of bonds, loan agreements or other obligations of the Authority.

Section 12. Obligations of Authority; Contracts for Separate Responsibility. Except as specifically provided herein, the debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of the Parties. A Party to this Agreement or a Local Agency may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of the Authority.

Section 13. Restrictions on Powers. Pursuant to and to the extent required by Section 6509 of the Joint Powers Act, the Authority shall be restricted in the exercise of its powers in the same manner as the City is restricted in its exercise of similar powers.

Section 14. Issuance of Bonds. In addition to any other powers conferred upon the Authority pursuant to law or contract, the Authority may issue revenue bonds pursuant to Article 2 and Article 4 of the Joint Powers Act to pay the cost and expenses of acquiring or constructing a project for any or all of the purposes permitted thereby.

Section 15. Bond Purchase Agreements with Local Agencies; Exemptions from Public Sales Requirements. The Authority may enter into a Bond Purchase Agreement with one or more Local Agencies. The Bond Purchase Agreement shall specify the maximum rate of interest, the cost of issuance, the amount of required reserve, and the procedure to be used in case of default. Local Agencies may sell their bonds to the Authority on a negotiated basis without

compliance with any public sale requirement included in the statutes under which such bonds are issued.

Section 16. Issuance of Bonds; Loans to Local Agencies. The Authority may, from time to time, issue its Bonds in the principal amount as the Authority determines necessary to provide sufficient funds for its purposes, which may include providing funds for Bond Purchase Agreements, payments of interest on Bonds of the Authority, establishment of reserves to secure the Bonds, and other expenditures of the Authority incident to issuance of the Bonds. The Authority may also issue Bonds for the purpose of financing the construction of Public Capital Improvements to be leased to Local Agencies. The Authority may also issue Bonds for the purpose of making loans to Local Agencies, to the extent those Local Agencies are authorized by law to borrow moneys, and the loan proceeds shall be used by the Local Agencies to pay for Public Capital Improvements, Working Capital, or insurance programs.

Section 17. Purpose, Terms and Form of Bonds; General Obligations.

A. The Authority may, from time to time, issue bonds to provide funds to achieve its purposes.

B. Bonds may be authorized to finance a single Public Capital Improvement, Working Capital, or insurance program for a single Local Agency, a series of Public Capital Improvements, Working Capital, or insurance program for a single Local Agency, a single Public Capital Improvement, Working Capital, or insurance program for two or more Local Agencies, or a series of Public Capital Improvements, Working Capital, or insurance program for two or more Local Agencies.

C. Bonds issued for the purpose of financing Working Capital shall be used to make loans to Local Agencies for any of the purposes for which a Local Agency may borrow money pursuant to California Government Code Section 53852. The loans shall be repaid in accordance with the terms of California Government Code Section 53854.

D. Except as otherwise expressly provided by the Authority, every issue of its Bonds shall be general obligations of the Authority payable from any revenues or moneys of the Authority available therefor and not otherwise pledged. These revenues or moneys may include the proceeds of additional Bonds, subject only to any agreements with the holders of particular Bonds pledging any particular revenues or moneys. Notwithstanding that the Bonds may be payable from a special fund, they shall be deemed to be negotiable instruments for all purposes, subject only to the registration provisions.

E. The Bonds may be issued as serial bonds or as term bonds, or the Authority may issue Bonds of both types. The Bonds shall be authorized by resolution of the Authority and shall, as provided by the resolution or indenture pursuant to which the Bonds are issued, bear the date of issuance; the time of maturity, not exceeding 50 years from their date of issuance; bear the rate of interest, either fixed or variable and, if variable, not in excess of the maximum rate of interest specified therein; be payable as to principal and interest at the time or times provided; be in the denominations provided; be in the form provided; carry the registration privileges provided; be executed in the manner provided; be payable in lawful money of the

United States at the place or places provided within or without the State; and be subject to the terms of redemption provided.

F. The Bonds shall be sold by the Authority at the time and in the manner set out in the Authority's resolution. The sale may be a public or private sale, and for price or prices, and on terms and conditions as the Authority determines proper, after giving due consideration to the recommendations of any Local Agency to be assisted from the proceeds of the Bonds. Pending preparation of the definitive Bonds, the Authority may issue interim receipts, certificates, or temporary bonds which shall be exchanged for definitive bonds.

Section 18. Purchase of Bonds by Authority. The Authority may, out of any funds available therefor, purchase its Bonds. The Authority may hold, pledge, cancel, or resell the Bonds, subject to, and in accordance with, agreements with bondholders.

Section 19. Loan Agreements. The Authority may:

A. Make secured or unsecured loans to any Local Agency in connection with the financing of Public Capital Improvement projects, Working Capital or insurance programs in accordance with an agreement between the Authority and the Local Agency. However, no loan shall exceed the total cost of the Public Capital Improvements, Working Capital or insurance needs of the Local Agency as determined by the Local Agency and by the Authority.

B. Make secured or unsecured loans to any Local Agency in accordance with an agreement between the Authority and the Local Agency to refinance indebtedness incurred by the Local Agency in connection with Public Capital Improvements undertaken and completed.

C. Assign or pledge all or any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible, of a Local Agency to which the Authority has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the Authority, for the benefit of the holders of Bonds issued to finance Public Capital Improvements. The pledge of moneys, revenues, accounts, contract rights, or rights to payment of any kind made by or to the Authority pursuant to the authority granted in this part shall be valid and binding from the time the pledge is made for the benefit of the pledgees and successors thereto, against all parties irrespective of whether the parties have notice of the claim.

D. Lease the Public Capital Improvements being financed to a Local Agency, upon terms and conditions that the Authority deems proper; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease; include in any lease provisions that the lessee shall have options to renew the lease for a period or periods, and at rents as determined by the Authority; purchase or sell by an installment agreement or otherwise any or all of the Public Capital Improvements; or, upon payment of all the indebtedness incurred by the Authority for the financing or refinancing of the Public Capital Improvements, the Authority may convey any or all of the project to the lessee or lessees.

Section 20. Other Financing Powers. The Authority shall have all other powers relating to the financing of Public Capital Improvements, Working Capital, and insurance needs provided in the Joint Powers Act and in other state law.

Section 21. Compensation of Authority Commission. The persons who serve on the Authority Commission shall not be entitled to compensation. The Authority Commission may authorize reimbursement of expenses incurred by individual Commissioners.

Section 22. Powers of Authority Commission. Except as otherwise provided in this Agreement, the Authority Commission shall exercise all powers and conduct all business of the Authority, either directly or by delegation to other bodies or persons. The Authority Commission shall provide for officers of the Authority and appoint or employ such staff as may be provided in bylaws of the Authority. The Authority Commission shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated. The Authority Commission shall receive, review and act upon periodic reports and audits of the funds of the Authority. The Authority Commission shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

Section 23. Meetings. The Authority Commission shall hold at least two regular meetings each year. The Authority Commission shall fix by resolution or in its bylaws the date upon which, and the hour and place at which, each regular meeting is to be held. Each meeting of the Authority Commission, including regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, being California Government Code Section 54950, et seq. The Authority shall have minutes of regular, adjourned regular, and special meetings kept by the Secretary of the Authority appointed by the Authority Commission. A majority of the members of the Authority Commission shall be a quorum for the transaction of business. However, less than a quorum may adjourn a meeting from time to time. A vote of the majority of a quorum at a meeting is sufficient to take action.

Section 24. Party Responsibilities. Each Party shall make contributions in the form of annual membership assessments and fees, if any, determined by the Authority Commission for the purpose of defraying the costs of providing the annual benefits accruing directly to each Party from this Agreement.

Section 25. Termination and Distribution of Assets. This Agreement may be terminated at any time that no Bonds or other obligations of the Authority are outstanding. Upon termination of this Agreement, all assets of the Authority shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the Parties hereto in accordance with the respective contributions of each of the Parties.

Section 26. Liability of Authority Commission, Officers and Employees. The members of the Authority Commission, officers and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest. No Commissioner, officer or employee shall be responsible for any action taken or omitted by any other director, officer or employee. No director, officer or employee shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.

Section 27. Bylaws. The Authority Commission shall adopt bylaws consistent with this Agreement which shall provide for the administration and management of the Authority, and the regulation of its business and the conduct of its affairs.

Section 28. Severability. Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 29. Filing with Secretary of State. The Chief Administrative Officer of the Authority shall cause to be filed, or shall confirm the filing of, a notice of this Agreement with the office of the Secretary of State within 30 days of its effective date, as required by Section 6503.5 of the Joint Powers Act and within 70 days of its effective date as required by California Government Code Section 53051.

Section 30. Effective Date. The effective date of this Agreement shall be November 5, 2003.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date indicated below.

DATE: _____

CITY OF MORGAN HILL

Mayor

ATTEST:

CITY CLERK

DATE: _____

MORGAN HILL REDEVELOPMENT
AGENCY

Chairman

ATTEST:

SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – OCTOBER 15, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 5:05 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Chang, Sellers and Mayor/Chairman Kennedy
Late: Council/Agency Members Carr, Tate (arrived for closed session).

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: Oregon Mutual v. Morgan Hill Unified School District et al.
Case No.: Santa Clara County Superior Court #1-03 CV 005398

3.

EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: City of Morgan Hill et al. v. Hearing Board of the Bay Area Air Quality Management District, et al
Case Number: AO 102518, Court of Appeal of the State of California First Appellate District

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 5:07 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session with the exception of the authority given to defend in the case of *Oregon Mutual v. Morgan Hill Unified School District et. al.*

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Alex Kennett, past president of Independence Day Inc., led the Pledge of Allegiance.

PRESENTATIONS

Chief of Police Galvin indicated that neither officer were in attendance this evening to receive their commendations.

Mayor Kennedy read Certificates of Commendation for Officers Erin McNish and Gary Smith for performance above and beyond the call of duty in the rescue of a woman from a burning building located on Warren Avenue.

Alex Kennett indicated that he is the City's elected representative to the Santa Clara County Open Space Authority, District 1. He introduced Patrick Congdon, Manager of the Open Space Authority. He presented a power point presentation on the overview of who/what the Open Space Authority is/does. He indicated that the Open Space Authority was created in 1993 by an act of the State legislature in response to efforts by students in local government who felt that there was a need for the acquisition of open space by means of easements or purchase of land in order to keep lands in open space in perpetuity. In place, is a citizens advisory committee consisting of volunteers from all walks of life who are appointed by the board and provide public input/channel of communication to the board; fostering a positive public image and helping educate the public about the goals of the Open Space Authority. The Open Space Authority has been broken into study areas and uses a guideline for land acquisition as lands become available. He said that there are three study areas around Morgan Hill that affect the city directly. He indicated that approximately 10,000 acres have been reserved as open space in perpetuity. He clarified that funding is based on an assessment that is placed on each residential unit with the current rate ranging from \$12 to \$32 per residential unit and is proportionate with larger units and commercial units. He stated that the Open Space Authority tries to use grant funding whenever possible, coordinating with other agencies such as the Santa Clara Land Trust, Nature Conservancy, Sierra Club and other organizations to help attain funding. He indicated that the Open Space Authority always pays individuals based on fair market/appraised value.

Mayor Kennedy inquired whether there was a criterion that favors lands close to population centers to achieve easier access. He referred to El Toro, indicating that it can be accessed by trails that are semi private and private. He said that it is difficult to get public access to some of the lands closed in.

Mr. Kennett indicated that the Open Space Authority is a public agency and that public monies are used to buy public land, whenever possible. He said that urban open space is a factor in the land selection criterion.

Patrick Congdon said that the criteria established for land acquisition is found in the Open Space Authority's five year plan. He knows that El Toro has been on the City's list for some time as a participating jurisdiction. Within the Santa Clara County 2020 Task Force Report, it lists the 30 highest ranked areas in the County for acquisition. Priorities are given to areas that are considered as top priorities to multi jurisdictions. He said that the Open Space Authority established specific goals for land acquisition. He stated that the 20% funding program is a great program as it gives something back to those individuals who pay into an assessment. He said that by giving back a percentage of what is collected; it goes to the participating jurisdiction to use within the city and directly benefits its residents. He encouraged the City of Morgan Hill and other participating jurisdictions to use the program.

Mayor Kennedy requested a copy of the criteria used for land acquisition. He encouraged members of the community who would like to advocate or push for more open space in Morgan Hill to work toward this goal.

ANNOUNCEMENTS

Mayor Kennedy announced an Evening of the Arts to be held on Tuesday, October 21, 2003 at the Community and Cultural Center from 5-8 p.m.

Recreation and Community Services Manager Spier invited the public to a free public session to be held at the Community and Cultural Center. She indicated that this event is co-hosted by the Morgan Hill Community Foundation and the City of Morgan Hill. An open house will be held on Tuesday, October 21 from 5-8 p.m., featuring performing artists from the Morgan Hill area to bring cultural diversity to the playhouse, community center and amphitheater. She said that the day will begin with a community grant workshop hosted by the Arts Council of Silicon Valley and the Community Foundation of Silicon Valley from 10 a.m. – 4 p.m.

CITY COUNCIL REPORT

Mayor Kennedy stated that one of the agencies that he serves on is the Santa Clara County Cities Association Board of Directors. He said that at its last meeting, the Board elected Mayor Pro Tempore Chang to serve as the Secretary/Treasurer, serving as an officer on the executive board. He congratulated Mayor Pro Tempore Chang on this appointment. He said that later on in the agenda, there will be discussion relating to some bylaw changes to this organization.

CITY MANAGER REPORT

City Manager Tewes updated the Council on budgetary matters. He said that there was a recent election held in the State of California. As a result of this election, there is a lot of anticipation for change. He stated that some of these changes will affect the City's ability to deliver quality community services in Morgan Hill. He indicated that the City is in the middle of a series of budget challenges that are caused by: 1) the local economy; 2) the state economy; and 3) policy decisions that are made at the state level. He said that it is important for the community to understand that the state legislature and the governor, through laws, determine how much of a community's revenue will support public safety services. One such revenue is the car tax, the motor vehicle license (MVL) fees. He said that there is a lot of anxiety about how this issue will be addressed since the revenues from the MVL fees are distributed to cities and counties to pay for public safety services. He said that staff will be watching this. He said that the state legislature and the governor determine the allocation of local property taxes based on Proposition 13. From time to time, monies are shifted, resulting in the loss of revenues to the Redevelopment Agency due to the reallocation of funds. He indicated that cities and counties receive 1% of retail transactions pursuant to state law. He said that there has been some discussion about changing the allocation formula.

City Manager Tewes indicated that agenda item 17 presents the Council with a monthly report on the City's expenditures and revenues. The monthly report shows that City revenues often lag by as much as 3-6 months the actual underlying economic activity that generated the revenue. He said that staff is reporting sales tax receipts based on economic activity of more than 90 days ago. He reported that these results are discouraging. He said that for the past 10 quarters, the City has seen a reduction in sales tax receipts. Based on the most recent data, it is clear that the City will need to revise downward its estimates of sales tax for the current fiscal year. When the Council adopted the fiscal year budget, it included reductions of many city services. The Council gave staff the direction to try and avoid any severe impacts to the community. He said that it was his belief that each and every city service that is financed by the general fund has seen some level of impacts. Staff continues to have a modified hiring freeze to moderate cost increases. He said that with this data, staff will be preparing updates to the City's five year financial forecast, presenting this to the Council in its annual goal setting session at the beginning of the next calendar year. He stated that it was important to note that the community started the fiscal year with a strong financial reserve but that the local economy has not generated enough revenue to support the level of services that the community has come to enjoy. Therefore, the City needs to consider a long term strategy on how to deploy these reserves and bring the City's spending patterns into alignment with long term revenues.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the Monthly Litigation Summary Report was before the Council, noting that there is the addition of one case, in Case No. 2 - Oregon Mutual Insurance Company v. the City of Morgan Hill. She said that this is the case that the Council discussed in closed session and is an out growth of the fuel tank leak of the Mintor and Fahey case.

OTHER REPORTS

None were identified.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not listed on this evening's agenda.

Brian Conry, Executive Director of the American Institute of Mathematics, invited the public to attend a special event that will be held on Tuesday, November 25, 2003, 7:00 p.m. in the Community Playhouse. He indicated that John Allen Paulos, a well known author and professor of mathematics from Temple University, will be giving a talk on *A Mathematician Reads the Newspaper*. He indicated that tickets are available at Booksmart and that free tickets are available to school groups and other groups. He stated that all proceeds from ticket sales will be donated to Math Counts to help this program get started in Morgan Hill.

Virginia Sellers, Manager of the Morgan Hill Certified Farmers Market, announced that the Farmers Market will be in operation year round at Third and Depot every Saturday from 9 a.m. – 1 p.m.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy pulled items 5 and 10 from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-4, 6-9, and 11-17, as follows:*

1. **RESOLUTION TO AUTHORIZE THE CITY MANAGER TO APPLY FOR DISASTER ASSISTANCE FUNDS FROM STATE OFFICE OF EMERGENCY SERVICE (OES) WHEN APPROPRIATE UNDER STATE DISASTER ASSISTANCE REGULATIONS**

Action: **Adopted** *Resolution No. 5723, Authorizing the City Manager to Apply for Disaster Assistance Funds from the State in the Event of Future Disasters Affecting the City of Morgan Hill.*

2. **MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF MORGAN HILL AND SANTA CLARA COUNTY FOR CERTAIN PROGRAM FUNDS FOR EMERGENCY PREPAREDNESS**

Action: **Authorized** *the City Manager to Execute a Memorandum of Understanding Between the City of Morgan Hill and the County of Santa Clara for the Administration of Certain Pass-Through Funds for Emergency Preparedness.*

3. **AQUATICS CENTER PROJECT – SEPTEMBER CONSTRUCTION PROGRESS REPORT**
*Action: **Information** Only.*
4. **REPLACEMENT PURCHASE OF POLICE VEHICLE**
*Action: **Authorized** Vehicle Purchase Through the State of California General Services Procurement Process for the Vehicle Identified in Staff Report For a Total Cost of \$31,668.00.*
6. **AWARD OF CONTRACT FOR PARADISE PARK IMPROVEMENT PROJECT**
*Action: 1) **Awarded** Contract to Sanchez Grading General Contractor in the Amount of \$163,974 for Construction of Paradise Park Improvements; and 2) **Authorized** a \$12,000 Construction Contingency.*
7. **APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH MORGAN HILL LAND, L.L.C. – CONDIT ROAD (APN 728-17-019)**
*Action: 1) **Approved** the Subdivision Improvement Agreement; and 2) **Authorized** the City Manager to Sign the Agreement on Behalf of the City with Morgan Hill Land, L.L.C., Condit Road (APN 728-17-019).*
8. **ACCEPTANCE OF BUTTERFIELD BOULEVARD SEWER TRUNK PROJECT**
*Action: 1) **Accepted** as Complete the Butterfield Boulevard Sewer Trunk Project in the Final Amount of \$320,210.23; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
9. **ACCEPTANCE OF FISCAL YEAR 2001-2002 TRAFFIC SIGNALIZATION PROJECT**
*Action: 1) **Accepted** as Complete the 2001-2002 Traffic Signalization Project in the Final Amount of \$496,494.75; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
11. **STATUS OF GOALS ADOPTED BY THE CITY COUNCIL ON FEBRUARY 26, 2003**
*Action(s): 1) **Accepted Report** on the Status of Goals Adopted by the City Council on February 26, 2003; and 2) **Directed** Staff to Report Back on Implementation Status in January 2004.*
12. **UPDATE ON DEVELOPMENT PROCESSING SERVICES STUDY IMPLEMENTATION**
*Action(s): 1) **Accepted Report** on the Implementation Status of Development Processing Services Study Recommendations; and 2) **Directed** staff to Report Back on Implementation Status in April 2004.*
13. **EMERGENCY AUTHORIZATION FOR ROADWAY REPAIR AND RESURFACING OF EAST DUNNE AVENUE**
*Action(s): 1) **Adopted** Resolution No. 5724, Declaring the Need for This Emergency Expenditure; and 2) **Approved** Expenditure Not-to-Exceed \$100,000 for Emergency Roadway Repair and Resurfacing of East Dunne Avenue from Holiday Drive to the East City Limit.*

14. **ADOPT ORDINANCE NO. 1637, NEW SERIES**

Action: *Waived the Reading, and Adopted Ordinance No. 1637, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK (APN 726-27-104 & 105).***

15. **ADOPT ORDINANCE NO. 1638, NEW SERIES**

Action: *Waived the Reading, and Adopted Ordinance No. 1638, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-08 FOR APPLICATION MP 02-24: SUNNYSIDE-QUAIL CREEK (APN 767-29-006).***

16. **SPECIAL CITY COUNCIL MEETING MINUTES FOR SEPTEMBER 24, 2003**

Action: *Approved the Minutes as Written.*

17. **SEPTEMBER 2003 FINANCE AND INVESTMENT REPORT**

Action: *Accepted and Filed Report.*

5. **APPOINTMENT OF SUBCOMMITTEE FOR ETHICS WORKSHOP**

Mayor Kennedy indicated that he would be interested in serving on this subcommittee and that it was his understanding that Council Member Tate would be interested in serving on this subcommittee as well.

City Attorney Leichter requested that the Council appoint a subcommittee to work with her on developing an agenda and presentation for the scheduled November 11 workshop relating to ethics and other topics.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Ratified** Mayor Kennedy's Appointment of Council Member Tate and his appointment to Work with City Attorney on Agenda for Substance of Ethics Workshop to be Held on November 11, 2003.*

10. **UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)**

City Manager Tewes said that for a couple of weeks, the City has been advertising in its city-wide newsletter that October 15 would be the day on which the City Council would be considering proposals to update the Residential Development Control System (Measure P). He stated that for more than a year a citizens task force, Planning Commission and City Council have been working through a series of proposals to update Measure P. He indicated that staff felt that action needed to be taken this evening due to deadlines established by the County Registrar of Voters. However, staff now understands that the City has a few more weeks to conclude its review of the proposed ballot measure. He informed the public that the Council's discussion on the update to Measure P will be held on November 5, 2003.

Council Member Sellers felt that it would be appropriate for the Council to receive testimony this evening from individuals who wish to address the Council and could not attend the November 5 meeting. He requested that the Council ask staff to go back and give a briefing to the Downtown Committee, taking advantage of this time to provide a public briefing. He felt that getting the details out on the proposed amendments may go a long way toward answering a lot of the questions that might arise at a later date.

Mayor Kennedy opened the floor to public comment.

Bruce Tichinin presented the Council with what he felt would be a historic opportunity to tie the acquisition of a greenbelt around Morgan Hill to future growth under Measure P. He felt that future growth anticipated under Measure P can be used as a means to partially fund the acquisition of conservation easements for land immediately around Morgan Hill and designate it as desired open space on a permanent basis. He stated that he represents his own interests and that of his clients; Salvatorio and James DiVittorio who own 20-acres of land near the intersection of Murphy and Tennant Avenue, east of Highway 101. He informed the City Council that the property owners are interested in designating their land for future industrial development as presented at the urban limit line committee meetings. The DiVittorios are prepared to pay their fair share as developers if they reach the point of acquisition of conservation easements in this area and elsewhere. He informed the Council that the property owners were reluctant to authorize him to use their names based on their fear of being held to a blank check. However, he assured them that it was important to release their names and authorized him to disclose this representation. He stated that this demonstrates that there are potential developers who are willing to pay their fair share of this cost. He suggested that the Council not put the proposed Measure P extension out to a vote of the people until it has reviewed the possibility of incorporating the provisions that provide for future development under Measure P to participate in funding for a greenbelt.

No further comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the Discussion of the Proposed Amendments to the Draft Initiative to November 5, 2003.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 18 and 19 as follows:*

18. JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR SEPTEMBER 24, 2003

Action: ***Approved** the Minutes as Written.*

19. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR OCTOBER 1, 2003

Action: *Approved the Minutes, as Amended.*

City Council Action

PUBLIC HEARINGS:

20. VACATION OF A PORTION OF BARRETT AVENUE – Resolution No. 5725

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5725, Vacating a Portion of Barrett Avenue.*

21. GENERAL PLAN AMENDMENT APPLICATION: GPA-02-08: MONTEREY-PINN BROTHERS (Item tabled 9/17/03) *Resolution Nos. 5726 and 5727*

Mayor Pro Tempore Chang recused herself from this item due to a previous contract by one of the employees in her office.

Director of Community Development Bischoff indicated that the applicant is requesting that this item be continued to the Council's November 5 meeting. He said that staff did not recommend continuance to November 5 as requested by the applicant as that is the date that the Council will be dealing with Measure P and a number of other items. He recommended that the item be continued to November 19, should the Council be inclined to grant the request for continuance.

Council Member Tate stated that he had a conversation with the applicant this afternoon and that the applicant decided to move forward with their application this evening. He said that the applicant did not understand that they did not have the conflict with Measure P this evening. The applicant was requesting the continuance because they felt that the Council would be overwhelmed by Measure P this evening. It was his belief that the applicant wishes to proceed this evening.

Mr. Bischoff indicated that there are two requests before the Planning Commission: 1) a change to the General Plan designation of approximately 7.5 acres of a 9 acre parcel from multi-family medium to multi-family low. 2) Amend the line that separates the area designated commercial from the area that is designated multi-family medium. He informed the City Council that the Planning Commission was supportive of the lot line change. However, the Planning Commission does not recommend approval of the General Plan amendment from multi-family medium to multi-family low as this would be inconsistent with the Housing Element of retaining 25-acres of vacant land for higher density development. The Housing Element policy would ensure that the City has an ongoing supply of vacant

land available to provide for the lower income levels. Approving the general plan amendment request would reduce the amount of vacant land that is available for higher density development to about 12 acres, resulting in a significant reduction below the 25-acres called for by the Housing Element. He stated that the developer would like the entire property general planned multi-family low. He indicated that resolutions were included in the Council's agenda packet. The first resolution (a) would deny the reduction in density. The second resolution (b) would facilitate approval of the applicant's request should the Council support it. The third resolution would approve the adjustment to the line between the commercial and residential general plan designation.

Mayor Kennedy opened the public hearing.

Vince Burgos, Development Processing Consulting, stated that rarely does he have a client who wants to down zone property. He indicated that at the time the applicant purchased the property, it was zoned R-2. It went through a general plan change to R-3 zoning. After analyzing development at a conceptual level, it was found that the best approach to this type of property was to come in with a PUD zoning that would provide for a mix and a natural transition, architecturally, to tie development together. After he submitted an application for a PUD amendment, staff felt that it would be better if they proposed simple R-2 zoning if he could show that he could feather from the R-3 project that exists to the north to the R-2 zoning located to the south. He provided staff with a site plan that demonstrated this layout and proceeded with it. He was surprised to hear that at the Planning Commission level, there was an inventory issue. He requested Council approval of the general plan amendment request for R-2 zoning so that it would allow the property to compete under Measure P. He said that the City has not seen the approval of many open market R-3 affordable for sale units. He stated that he could not make an R-3 housing product compete successfully unless the Council set aside units for this housing product. If the Council was to approve the General Plan amendment, it would necessitate a change in the zoning designation to R-2.

Mr. Bischoff indicated that the applicant did not apply for a zone change. Therefore, a separate action would need to be taken to change the zoning to conform with the general plan.

No further comments being were offered, the public hearing was closed.

Council Member Tate indicated that he met with the applicant and that he was surprised to find that there have been no special set asides for R-3 housing products. Rather than changing the zoning and general plan, he felt that Measure P allowed flexibility in having set asides, specifically for the purpose of getting this type of housing product developed when there is a supply and demand that matches. He stated that this would be the route he would like to follow versus a general plan amendment approach. He felt that the Council should support the line change but would prefer to get the market rate R-3 housing that would provide an almost affordable market rate entry housing in Morgan Hill.

Council Member Sellers stated that he would be inclined to agree with Council Member Tate's comments regarding set asides for multi-family housing. He requested that staff elaborate as to the process if this is something that the Council needs to consider for the upcoming Measure P update.

Mr. Bischoff said that there has been a case in the past where the Council set aside for multi family development when the City realized that it was not getting apartment projects. He stated that Measure P

allows the Council to create set asides, if it wishes, for a variety of purposes, including multi family/apartment projects. The Council did this for one or more competitions. As a result of this, the City saw the development of a couple of apartment projects. He felt that set asides are an affective tool to achieve the type of housing product desired in the City. He said that the Council can look at set asides for future competitions and that set asides does not require an amendment to the RDCS or any ordinances current or future.

Council Member Carr noted that R-3 set asides could be set up where the product would be for sale units. He noted that the staff report refers to the 25-acre minimum in the R-3 inventory. He inquired whether the 25-acre minimum exists today.

Mr. Bischoff informed the Council that there is not a 25-acre minimum R-3 inventory attributed in part to the court house project. The court house is an 8 acre parcel that was designated R-3.

Mayor Kennedy felt that the applicant was stating that they believe that they would be more successful under an R-2 competition unless there is a set aside for R-3 development. He noted that the set asides are established by Council action. He inquired whether there was a proposal or plan to take this action.

Mr. Bischoff responded that the Council would need to establish the set asides in advance of the next competition or any given competition.

Council Member Tate noted that the Planning Commission discussed set asides and were supportive of set asides.

Mayor Kennedy indicated that he also met with the applicant and discussed their request. If the Council was to make an R-3 set aside, would it be consistent with Mr. Burgos' clients plans?

Mr. Burgos responded that R-3 set asides would allow this property to be competitive and to get a project going as this was the reason that the zone change was being requested. He said that there may be other proponents who would be competing for R-3 set asides.

Council Member Sellers felt that it would be a good faith effort on the Council's part to make a specific declaration of its intent of creating an R-3 set aside at the appropriate time.

Action: *Council Member Sellers made a motion, seconded by Council Member Tate, to **Adopt** Resolution No. 5726, Denying the General Plan Amendment.*

Council Member Carr noted that the Council will be considering some changes to Measure P and going to the voters asking for their support of the changes. Within these changes, the City has talked about other types of set asides for downtown, mixed use, and other uses that include higher density. Should the Council make changes to set asides for the next competition, it would apply to the first competition of the update to Measure P. He inquired whether the Council would be creating so many set asides that it results in competition for set asides.

Mr. Bischoff said that without looking at the numbers and not knowing how many allocations would be available, this may be a concern. He said that he did not have a good answer without doing the math and

trying to estimate the number of units that will be available and how many of these units would be reserved for the downtown.

Council Member Carr recommended that the Council keep this in mind as it moves forward. He stated that he supports the recommended actions knowing that the Council would not actually create the set asides for some time. He felt that the Council needs to make sure that it knows this is the direction that it is heading.

Mayor Kennedy noted that the Council would be taking future actions to create set asides for R-3. Therefore, he would support the motion.

Vote: *The motion carried unanimously (5-0).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5727, Approving Adjustment to Boundary between Multi-Family Medium and Commercial General Plan Land Use Designations.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Stated** that it would be the Council's intent to consider R-3 set asides at the next consideration (July 2004).*

22. ZONING AMENDMENT AND DEVELOPMENT AGREEMENT APPLICATIONS ZA-02-12/DA-02-11: NINA LANE-CHEN – Ordinance Nos. 1639 and 1640, New Series

Director of Community Development Bischoff presented the staff report, recommending approval of the zoning amendment and development agreement applications.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1639, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1639, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1437 WHICH ADOPTED A PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT PROJECT WITH COMMON OPEN SPACE AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DR. AND SAN VICENTE COURT. THE AMENDMENT INCLUDES THE ADOPTION OF A NEW PRECISE DEVELOPMENT PLAN FOR FIVE SINGLE-FAMILY HOMES AND ONE GRANNY UNIT (APNs 817-60-062 thru -067)***

(ZA-02-12: NINA LANE-CHEN), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement Ordinance No. 1640, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1640, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-02-01: NINA LANE – CHEN (APNs 817-60-062 thru -067) (DA-02-11: NINA LANE – CHEN) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

23. ZONING AMENDMENT APPLICATION ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT -ATTACHED HOUSING – Ordinance No. 1641, New Series

Director of Community Development Bischoff presented the staff report. He indicated that at the Council's meeting of October 1, a status report was brought before the Council for direction. The Council directed staff to bring back a comprehensive ordinance for its consideration that would allow for an alternative for attached housing units on an interim basis. He indicated that an amended ordinance was distributed to the Council this evening, reflecting the minor changes recommended by the Planning Commission last night. He highlighted the major features of the proposed ordinance, noting that the ordinance has a sunset two years from its adoption with a review after one year following its adoption. He said that the Planning Commission and the subcommittee were concerned that this was an ordinance that it did not want on going but that it was a stop gap measure to address an immediate problem relating to insurance coverage for attached units. Also, modifications for the detached units would only be available to projects that have allocations in the 2004-05 fiscal year. He felt that this situation would only apply to approximately 20-40 homes. Besides the two added amendments to the proposed ordinance recommended by the Planning Commission, there is one other amendment that staff would propose, a clarification regarding subsection 17. He said that this section should be amended to read: "Future Measure P applications ~~may~~ **shall** be subject to the following requirements. Subsection 17.a should also be amended to read: "Applications may include plans for both attached dwellings ~~and~~ **or** modified setback drawings..."

City Attorney Leichter said that although the impetus which brings this to the Council's attention were stated as being financial difficulties or inability of developers to obtain the insurance product, this alone cannot form the basis for a zoning change or amendment due to financial inability to comply with zoning requirements. However, this would result in the inability to satisfy the City's below market rate housing commitments, and the fact that the detached housing product is a more viable attractive product which enhances the aesthetics of the surrounding communities. These are the findings on which staff has predicated this ordinance and not the inability for developers to obtain the insurance or the financial impact associated with attaining insurance.

Council Member Sellers referred to Section 17a and recommended the elimination of the word “both.”

Mayor Kennedy opened the public hearing. Dick Oliver, developer and member of the subcommittee, informed the Council that he would answer any questions which it may have. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1641, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1641, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING (ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT/ATTACHED HOUSING)**, as amended, by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

City Council Action

OTHER BUSINESS:

27. CONSIDER REQUEST FROM MORGAN HILL KIWANIS CLUB TO WAIVE SPECIAL EVENT PERMIT FEES

Mayor Kennedy opened the floor to public comment.

Barbara Kimmich, representing the Kiwanis Club, requested that the Council consider waiving the Special Events permit fee for the Holiday Parade this year as has been done in past years.

No further comments were offered.

Council Member Tate felt that the Council should support the Kiwanis Club’s request to waive the fees for the Holiday Parade. He understands that there is a budget problem but that it was not his understanding that the City would leave the Holiday Parade activities out. He stated that he would be happy to transfer \$125 from the Youth Empowered for Success (YES) budget. He requested that this event gets prioritized up there with IDI Fourth of July Activities.

Council Member Carr suggested that YES be a sponsor for this event and that the City find ways to involve character building for youth as the project is planned.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Agreed** to fund the Special Event Permit out of the YES funding.*

24. STANDARDS FOR INTERIM DEVELOPMENTS

Director of Community Development Bischoff presented the staff report, indicating that the Dayworkers Committee is aggressively pursuing the development of the dayworker center at the intersection of Depot and Main Avenue. He indicated that they have run into some funding issues as there were certain expectations at the beginning of the process that there would be certain costs involved. The Dayworkers Committee has found that the more they got into this project, the cost became greater. An area where costs seem to be high are associated with the required on site improvements. He indicated that the City's zoning codes require that all projects include paved parking lots, landscaping and parking lights. The costs associated with these improvements were not anticipated in the overall budget for the facility. He stated that it was the Dayworkers Committee's belief that to install these improvements on an interim project may not be money well spent. He indicated that the Dayworkers Committee has a three-year lease on the property and that it was their belief that they would not be on the property any longer than five-years. Therefore, they do not believe that it is financially prudent to install the improvements. He said that the Dayworkers Committee is requesting that the Council consider amending the zoning codes to provide relaxation of standards for interim uses. He said that any changes proposed would need to be reviewed and approved by the Planning Commission. The Dayworkers Committee is requesting that the Council refer this matter to the Planning Commission, requesting that they give consideration to what amendments might be appropriate in light of the circumstances of the dayworker center.

Mayor Kennedy opened the floor to public comment.

Julian Mancias, Chairman of the Board of the Dayworkers Committee, informed the Council that the Committee has been actively pursuing a location for a dayworker facility at Main and Depot. He requested City relief from some of the costs that the temporary uses may incur.

America Romero, director of the dayworker center, stated that up to this point, the Dayworkers Committee has completed all the site design for the Center according to City requirements. She said that the South County Dayworkers Committee has a five-year lease with a sixth-year option to lease on a month to month basis. She noted that the municipal code does not make provisions for staff, planning commission or Council to amend or relax the requirements to accommodate an interim use facility. She requested that the Council give staff direction as to the proper course of action to take to come up with requirements that are adequate, yet friendly, to an interim use. She said that it is approximately a \$200,000 expense to install permanent improvements that will more than likely be torn out by the property owner as he gets ready to proceed with his project in a few years. She indicated that the dayworker center has received a lot of community support with most expenses being donated by members of the community. However, they are still faced with the extremely high fees and expenses due to the permanent structure requirements even though this is an interim use facility. The Dayworkers Committee would like to keep costs down as it would give them an opportunity to have that much more in reserves for a future permanent facility. She requested that the Council amend the ordinance in order to allow a scaled down version of the following four items: 1) parking lots with lights built to permanent specifications, 2) additional curb and gutter on site, 3) landscaping, and 4) City

fees/development fees. She indicated that the offsite requirements have been covered by a previously approved RDA loan to the property owner, noting that the City will recuperate these costs at a later date when the owner gets ready to develop the property. She stated that up to now most of the money earmarked for this project will be coming back to the City. She requested that the Council consider relaxing the requirements so that the dayworker center can become a reality by the end of the year.

Mr. Mancias clarified that the Dayworkers Committee will be pursuing a five year lease with the option to extend the lease at the end of the five-years. This gives the City more reason to invest money as the center will be located in this location for a while. The Dayworkers Committee does not want to waste money and wants to make sure that the money saved is put into a permanent site. He felt that the Dayworkers Committee can proceed however the Council decides but that it is a goal not to waste money. He indicated that the community has been supportive and that a lot of the cost will be paid for by community individuals, volunteers and by donations. He felt that this would result in an economically feasible use if spanned out 5+ years.

Mayor Pro Tempore Chang inquired as to the term of the lease signed.

Mr. Mancias responded that it is a 3 year lease, with the lease reading 3-5 years. At the end of 5th year, it is a month to month lease option whereby either party can terminate the lease. He indicated that the Dayworkers Committee has received a verbal agreement that states that they have a five year lease option. If it is advantageous for the Dayworkers Committee to enter into a five-year lease, they would agree to do so. If a three year lease is preferred by the Council they can also agree to this.

Mayor Pro Tempore Chang said that term of the lease is one that is decided upon by the owner and the Dayworkers Committee and not the Council. She said that when the Dayworkers Committee came before the Council requesting an interim use, the Council understood that it would be a three-year lease a short term lease. She felt that once you get into a five year period, it is no longer a temporary use.

Mr. Mancias said that should the City relax some of the money that the Dayworkers Committee has to pay; it would be easier to proceed with a three year lease. He stated that the more money invested in the property, the better it would be for the center to remain a little longer. If the Council is willing to relax some of the requirements, the Dayworkers Committee could spend less money on the site, saving these funds for a future permanent site/facility.

Charles Weston, property owner, indicated that the lease is written at three years but that it should have been written for a five-year lease. He stated that he would be willing to amend the written contract to state that the lease can go up to five years and on a monthly basis thereafter. He felt that the amendment before the Council would not only affect the dayworker center in terms of some of its on site costs, but that he sees other applications. It was his belief that if it does not affect the structure of a building or the health, safety and welfare of its inhabitants or handicaps accessibility, the Council should be able to have some latitude. He felt that there are social goods that come up on various projects that fail because they cannot get around certain ordinances. He felt that the Council should have the ability to determine the project's merits irrespective of what is stated in the ordinance. He said that the process that developers follow is rather cumbersome, difficult and straight forward and that those who administer the ordinance do not have the ability to have discretion. With the proposed amendment, the Council would have the ability to have discretion.

No further comments were offered.

Council Member Sellers noted that the bottom of the staff report references the fiscal impact. It is stated that "...any waiver or reduction or indefinite deferment of fees would negatively affect..." He inquired whether there was a president for any short term deferment, allowing the project to proceed.

Mr. Bischoff did not recall the City ever approving a deferment of improvements. He said that there are other jurisdictions that allow for the payment of in lieu fees or the deferral of improvements for a certain period of time.

Mayor Pro Tempore Chang noted that the staff report indicates that the dayworker center may be eligible for future CDBG funds. She inquired when these funds would be made available.

Director of Business Assistance and Housing Services Toy indicated that the current CDBG cycle starts in December with recommendations coming to the Council in April. At that time, funds would be available in July should the Council make allocations available to a project. He said that the Council has the option of reprogramming funds from existing projects such as Galvan Park. Staff recently determined that this project was under budget and that there could be upwards of \$30,000 available for the Council to reprogram for current activities this year. This funding would be available immediately following a public hearing to reprogram funds.

City Attorney Leichter stated that the City needs to have a rational basis and not be arbitrary or capricious when ordinances are adopted. When you go back to the reason why this is being requested, the inability to pay, there has to be a linkage between the reason why there are parking lot and street lighting requirements. She said that the City would need to respond to why it is appropriate to defer improvements for a particular organization. She felt that a linkage was necessary.

Council Member Sellers felt that there is a potential to make a linkage why this particular case is a unique situation as the City is trying to accommodate a temporary use that more than likely will not happen again. Yet, the City should not create a precedent that would have unintended consequences. He inquired whether there was medium to do both.

Mr. Bischoff indicated that staff and the Planning Commission can brainstorm various ideas and return to the Council with suggestions or with a draft ordinance for Council consideration. He informed the Council that staff has not consulted other cities to see if they have adopted policies or ordinances relating to interim facilities that may be appropriate in this case.

City Manager Tewes said that cities have different underlying standards and requirements. He said that some cities do allow projects to proceed without full parking lots and that some cities do not require landscaping. He was not aware of any instances where a separate standard has been developed for an interim use.

Council Member Sellers noted that the staff report points out that there is no guarantee that the dayworker center would be temporary in nature even though it would be highly likely that it would be a temporary use. He did not believe that it would be appropriate for the City to tell the Dayworkers

Committee that it cannot stay on this site for more than three years. This would result in the City making changes to the ordinances that become wholesale in nature and that the implications would go well beyond what the Council was trying to do. He felt that everyone shares the same goal but that he was trying to make sure that the Council does not destroy a lot of other things in the process.

Mayor Pro Tempore Chang felt that this use could be temporary in nature. She felt that it would be up to staff and the planning commission to figure out the most appropriate way to handle this situation.

Council Member Carr stated that he was struggling with the fact that the Council cannot draft something that is specific to this project as it could apply to other situations. He said that the Council set upon a course some time ago with CDBG dollars that were allocated to this project and that the Council felt that this was the right way to address this issue. He felt that everyone hopes that as the door opens, the focus would be on a permanent site. In the meantime, the Council will have changed a set of rules for the entire community as the Council cannot make it specific to this project. He felt that an ordinance amendment would open the doors for other uses to come forward requesting relaxing of city standards. He felt that the Council needs to figure out a way to deal with this issue.

Mayor Pro Tempore Chang felt that the City could implement an ordinance on a six month trial basis to see whether there are other implications. If the ordinance does not work, the Council could take it off the books. She recommended that the Planning Commission explore the possibility of implementing an ordinance. Should the Planning Commission recommend an ordinance be adopted, supported by the City Attorney, the Council can proceed with the adoption of the ordinance. If not, the Council would need to go through a different route. She noted that the implementation of an ordinance would take 2-3 months and would delay the project. An alternative would be to use the \$30,000 CDBG funds to construct the parking lot. She stated that she did not like using CDBG funds for temporary uses as it would be a waste of money. She said that she reviewed the Dayworkers Committee's budget, indicating that they are not that far off budget, noting that they have received major donations for this project.

Council Member Sellers said that given that the City has extra funds in this year's CDBG budget that were not expended, this may be an appropriate reallocation. However, he was not willing to tie up future CDBG funds. He requested that staff explore some of the deferment issues because of the specific nature of the temporary use. He recommended that staff focus on ways to make the existing ordinance work and to consider, if necessary, short term deferments that meet legal requirements. Should the Dayworkers Committee receive donations for landscaping, they would be allowed to install them within a certain period of time as opposed to paying fees. He recommended that the City help the project get off the ground and provide additional funding to bridge the gap and not delay the project. He noted that it would delay the project by 2-3+ months if the City goes through an ordinance amendment process.

Council Member Tate said that everyone wants the dayworker center to work. He indicated that he and Council Member Carr met with Ms. Romero and Mr. Mancias and discussed at length some of their concerns. There were questions regarding the long range plan for the dayworker center and its future location. The response was that it was felt that the center had to open and be made to work so that they could get to the point where they can proceed with long range planning. He noted that this week the Council is receiving a request to define what an interim use means and bend ordinances. He said that he understood Mr. Weston to state that he felt that this was applicable to other situations; however, he did not see what they were. He felt that the issues were specific to this use. He said that he was trying to

find a way to make the interim use work and that he has not heard anything suggested that he would be comfortable supporting. He stated that the focus appears to be on making the dayworker center work. Now he hears Mayor Pro Tempore Chang, who serves on the Dayworkers Committee, ask what would happen if this does not work at all. Before taking all these extraordinary steps, he would like to understand what would be in place to assure the project would work and what the operating practice would be. He stated that he would like to come up with an innovative solution to this problem without changing the City's ordinances and codes.

Mayor Kennedy inquired whether the applicant has any information on how facilities like these have been built in other communities.

Ms. Romero indicated that some cities have placed this similar use in permanent buildings, others as a mixed use facility, while others rent a building on a month to month basis. Therefore, there are variations to make the use work. She indicated that there are not many buildings available in Morgan Hill. Through natural selection, the day workers have chosen the Depot/Main corner. Therefore, this would be the optimum place for them to be.

Mayor Kennedy indicated that he has seen a fair amount of modular buildings throughout the City. He inquired how the City has typically addressed modular buildings.

Mr. Bischoff indicated that Morgan Hill does not treat modular buildings differently than it does permanent buildings as the code does not differentiate between these buildings. Therefore, the same standards would apply. He stated that staff could contact other cities to see how they have handled installation of modular buildings and under what circumstances to determine what might work best.

Mayor Kennedy said that it would be a shame to spend/waste a lot of money on improvements that would be torn up 3-5 years later, noting that most of the labor and material have been donated. He felt that the City needs to find a way to make this work.

Council Member Carr said that when the Council decided that it wanted to help address the issue of dayworkers in Morgan Hill, the Council stated that it did not want it to become a city project. He noted that the Council has become increasingly involved in this project financially, in time, and other ways. He indicated that the economic development subcommittee has asked that anyone coming before it for assistance has to demonstrate a need. Applicants would need to open up their books and show the subcommittee their finances, how the business will work, and identify the gap that is being requested be funded. He felt that staff could find unique ways to address the issues that perhaps the applicant did not think about and that solutions may result from existing programs. He did not know if this process has taken place in this situation and whether staff has been able to review the issues. Perhaps the Council is not talking about the need to relax the standards in this case. If there is a very small gap that needs to be realized in order to install the improvements, maybe this is what needs to be discussed versus discussing the standards. If there is concern about the loss of revenues when the improvements need to be torn out, he felt that this would be a private developers concern and not the City's concern at this point as the City has not been presented with a long range plan. He recommended that the Dayworkers Committee go back and involve staff to determine the gap and figure out a way to address the gap versus addressing this globally.

Mayor Pro Tempore Chang indicated that the Dayworkers Committee has a set a number and that they requested staff's assistance. She said that the suggestion of an interim ordinance was a staff recommendation. She said that Mr. Toy has done a wonderful job figuring out alternatives. She recommended that the Dayworkers Committee share these numbers with the Council.

Ms. Romero presented numbers that reflect the costs for permanent structure requirements and what it would mean if the standards were relaxed. She said that it would cost \$250,000 to get the project going. If you take into account donations, the Dayworkers Committee is looking at a difference of \$50,000.

Council Member Carr said that he has heard from the Council liaison to the Dayworkers Committee that most of the items are covered through donations and donated labor. Therefore, the discussion is not about the \$250,000. He said that talking about filling this gap would be quicker and easier and would cause fewer problems for the City in the future versus changing standards for development. He felt that this is the discussion the City should be having. He was not suggesting that the City writes a check and fills the gap but that there may be ways that the City could help facilitate how things are done.

Council Member Sellers inquired whether there was general Council concurrence on the appropriate use of the \$30,000 CDBG funds. He said that there are specific requirements for the use of CDBG funds such as community development projects. He felt that this use would fall within the traditional definition of CDBG funding and would be an appropriate use of funds. He stated that the use of CDBG funds is one that the Council does not take lightly, particularly in these tough budget times. He said that every time this issue is raised, the Council raises the appropriateness of its participation. Should the Council have concurrence on the use of the \$30,000 CDBG funds, this would help the Dayworkers Committee get further along. The City could take other interim steps such as allowing staff to review opportunities within existing ordinances. This would allow the project to proceed sooner, would be less painful, and would show an appropriate balance between public/private and non profit that the Council needs to strike.

Council Member Tate noted that the Council has already allocated \$50,000 for this interim use and that he did not know the probability of success.

Council Member Sellers recommended that the allocation be based on a demonstration of need and viability on the part of the entity. The Dayworkers Committee could be asked to come back to demonstrate both of these things prior to the issuance of funding.

Council Member Carr stated that he would support Council Member Sellers recommendation as one of the options. At the same time, he would be interested in hearing from staff where the City would get the funds for Galvan Park, if funding is to be reprogrammed, as this is an important project to segments of this community.

Council Member Sellers stated that it was his belief that there were cost savings with the Galvan Park project.

Mr. Toy said that the City budgeted \$246,000 for Galvan Park and that it is estimated that the project will come in at \$215,000. Therefore, there would be approximately \$30,000 in cost savings upon completion of the project.

Mayor Pro Tempore Chang felt that there are many uncertainties about waiting for this item to return to the Council. She stated that she has worked thoroughly on the numbers with the Dayworkers Committee. She said that the Dayworkers Committee has an aggressive date to start this project. They were hoping to have definitive answers. She felt that Council Member Sellers' suggestion of allocating the \$30,000 in CDBG funding and the review of existing codes was an excellent suggestion, an action that could be taken this evening. If Council Member Carr is interested in reviewing the numbers, she would be willing to meet with him tomorrow.

Mayor Kennedy inquired what would happen to the schedule should the Council delay a decision in order to allow additional information to be provided to Council Members Carr and Tate.

Council Member Carr stated that he was not looking for more time to meet with Mr. Mancias and/or Ms. Romero as he met with them last week to discuss these issues. He did not believe that a package has been put together. He said that the Council is assuming that the improvements would cost \$250,000 and that the Council has to fill the \$200,000 gap. He stated that he was not comfortable relaxing development standards that have been very important to this community on a piece of property that is important to the downtown in a way that does not coordinate with the Downtown Plan. He felt that alternatives exist short of relaxing the standards that would get the project moving along. He did not believe that the Council can make a decision tonight without benefit of additional information.

Council Member Sellers noted that there is a potential of using \$30,000 in CDBG funds if it can be demonstrated that there is a need, the use is viable and that the City has looked at other options for taking existing ordinances to help bridge the gap. He recommended that the Dayworkers Committee go back and look at this comprehensively, based on its budget, opportunities and existing ordinances. He stated that there may be other creative mechanisms that can be pursued. He felt that the Dayworkers Committee can return with a complete packet of information, demonstrating how they have bridged the gap.

Mayor Pro Tempore Chang indicated that she would provide a packet of information that has been put together by Ms. Romero as it contains all the numbers. She said that a portion of the funding has been through donations. In order to make this temporary use work, it would require that the City to relax its standards with regards to the installation of parking lot/lights, curbs and gutters, and landscaping, including permit fees and development impact fees.

Council Member Tate felt that reviewing the numbers may allow for innovative means to help this project bridge the gap short of amending the ordinance, allowing the project to move forward.

Mayor Pro Tempore Chang indicated that she has spent time with staff considering alternatives that they believe would work. The Dayworkers Committee is requesting that the Council assist with the four identified improvement requirements.

Mayor Kennedy said that he hears Council Members Carr and Tate stating that they need more information before moving forward with what Member Sellers' suggestion.

Council Member Sellers suggested the following: 1) an initial review of opportunities within the existing ordinance, figuring out ways to make it more appropriate for this project; 2) give consideration to temporary deferment within the existing ordinance; 3) if there is a continued gap, the Council to sit down and go through the Dayworkers Committee's budget, determining how the potential availability of the \$30,000 CDBG funds would be utilized; and/or 4) the presentation of a comprehensive report on the viability of this project. He felt that these were the same suggestions being suggested by Council Member Carr, consolidating the issues that need to be addressed. He recommended that the Dayworkers Committee return to the Council in 4-6 weeks and identify areas of resolution, identifying the gap that would allow them to proceed and be viable.

Mayor Pro Tempore Chang said that the dayworker center has an aggressive goal to break ground before November 1. If the Dayworkers Committee is not given the money, they will not be able to proceed with the project. She said that there are construction items that can be undertaken while waiting for an ordinance amendment. She felt that a definitive answer would help. She recommended that the dayworkers center be granted the \$30,000.

Council Member Sellers noted it would take three months before enacting an ordinance amendment. He noted that the Council would not be able to allocate the \$30,000 this evening as this action was not a part of the agenda. Therefore, allocation of the \$30,000 would need to return to the Council for consideration. In the meantime, the Dayworkers Committee can work toward demonstrating viability, need and how the funds would be used.

Council Member Carr inquired whether a motion was necessary as he felt that the Council has given direction to staff based on Council discussion.

City Manager Tewes said that staff needs clarity on one point. He said that it is the municipal code that provides for these requirements. He said that the municipal code does not allow waiving the requirements under any circumstances. He stated that the request before the Council is to amend the ordinance to allow the Planning Commission or the City Council to make certain findings in certain circumstances so that the requirements can be amended. Therefore, the ordinance would need to be amended if any of the solutions involve waiving the requirements. He stated that he preferred the notion of a deferral as opposed to waiving the requirements but that it would still require an ordinance amendment to accomplish this.

Council Member Carr stated that he was not convinced that changing the ordinance was the way to go. Based on the information presented by Mayor Pro Tempore Chang, there are only two items that suggest that the City change the ordinance. He said that the unintended consequences of what is being discussed are far greater. He felt that the Council needs to have a better package brought before the Council to discuss these issues. He suggested that the Council direct staff to look at the proposed project, including fees, confirming that the improvements equate to \$200,000. He said that staff can meet with the Dayworkers Committee, reviewing their budget to confirm the gap needed to make this project move forward. He wanted to talk about the gap and figure a way of bridging the gap without changing the municipal code and relaxing standards.

Council Member Tate felt that the Planning Commission may find that there may be benefits to other projects and that the Council may find a way to defer certain standards/requirements for a certain period

of time for interim uses. As the Council is anxious about the timeframe, he felt that the Council would want to proceed.

Council Member Carr stated that it is his hope that in staff's review of the use that the City may be able to narrow the scope of things that would need to be deferred or waived. He stated that he did not want to slow down the process. He inquired whether there was a way to scale down the four items identified so that the Council does not have to waive the requirements listed in the current standards.

City Attorney Leichter stated that to the extent that the Council is considering waiving, loosening, or deferring requirements, she has heard a lot of different scenarios this evening. She stated that she would appreciate direction from Council. She inquired whether three years would be considered an interim use or whether a one year lease followed by multiple one year leases are to be considered an interim use. She inquired as to the Council's sense in terms of an interim use as she would need to draft an ordinance as narrowly as possible.

Council Member Tate responded that the Council wants to do what makes sense. He indicated that he would be willing to work with a couple of planning commissioners and study this issue.

Council Member Sellers felt that the Council has given sufficient direction to staff to further this issue and try to figure out a way to bridge the gap.

Mayor Kennedy noted that Mayor Pro Tempore Chang has spent a lot of her own time trying to put all this information together, working with staff. It was his belief that it was the desire of the majority of the Council to ask staff to help work through this process and obtain the missing pieces of information; coming up with ways to make the interim use work. He felt that involving the Planning Commission was a good suggestion as they might come up with good ideas.

Mayor Pro Tempore Chang indicated that the financial packet has been put together but has not been presented properly at this time. If all information can return to the Council with the exception of the interim changes, she inquired whether this portion can return to the Council for consideration in two weeks.

City Manager Tewes summarized that the Council has asked that staff help to work through the process and help bridge the gap, involving the Planning Commission. He inquired whether the Council would like staff to draft an ordinance that would allow for the waiving, loosening and/or deferring the standards. He noted that some Council Members expressed a concern about such an ordinance while others suggest that this must be a part of the solution. He stated that he was not clear as to the Council's direction in this regard. He said that there are two challenges in drafting an ordinance and that the City Attorney has addressed one of the concerns. He felt that approval of a deferral would be better than waiving the requirements. There would be a challenge in drafting an ordinance in such a way that would withstand legal scrutiny as the ordinance would have to be applied to similar situated projects.

Mayor Kennedy noted that the current ordinance requires improvements to be installed for interim uses as though it was to remain a permanent use. Anything less than this would require a change in the ordinance, therefore, the Council has to proceed with an ordinance amendment. He stated his support of

appointing a Council subcommittee to help direct this activity, working with staff. He recommended that the Planning Commission designate a subcommittee of the Planning Commission as well.

Council Member Tate noted that the Planning Commission met last night and that it would be a couple of weeks before they meet again.

Mayor Kennedy recommended that the Chair of the Planning Commission appoint two planning commissioners to work on this project.

Action: **No action taken.**

25. SENIOR SPACES AT THE INDOOR RECREATION CENTER

Recreation and Community Services Manager Spier presented the staff report and requested Council direction on determining whether the senior nutrition site should be a programming space that would be continued within the Indoor Recreation Center (IRC). She informed the Council that next week, the principal project manager will be before the Council with the final schematic design. She stated that the senior nutrition is a key programming element. She stated that staff has held several meetings with Catholic Charities as well as representatives from the Health Department. Catholic Charities have expressed their concerns and commitment of being a part of a whole project. She indicated that the senior advisory committee expressed concern regarding the programming spaces. The committee requested that staff provide details regarding the programming spaces and a programming requirement document. She stated that staff recently received this document from the Sports Management Group. Staff will be presenting this document to the Parks and Recreation Commission, senior advisory committee followed by City Council review. The senior advisory committee talked about specific spaces within the indoor recreation center they would like to see move on throughout the schematic design. She indicated that the committee would like to see the following incorporated in the design: 1) computer/technology room (dedicated space of approximately 300-400 square feet); 2) more classroom space dedicated for senior programming uses, activities and events; and 3) the kitchen to be built to have dedicated hours (8 a.m. – 2 p.m.). She said that the kitchen recommendation being forwarded to the Council fits within the schematic design and provides some community use (e.g., ice machine and dishwasher). The senior advisory committee did not believe that this was a true multi use facility such that a group that wanted to use the kitchen that were not part of the senior nutrition program would not be able to utilize the kitchen M-F 8 a.m. to 2 p.m. to the capacity that they thought should be the case. The senior advisory committee requested that the Council consider other issues: 1) the current level of programming currently in place is not adequate and that they would like to see more programming activities and events occur for seniors and active older adults. 2) They were interested in a city-wide policy where they would have access to activities. However, it was not defined whether these activities are to be subsidized or free where they would be able to use other facilities (e.g., community and cultural center). 3) They would like to see a senior services policy from the Council relating to fees, facility use, and programming spaces at the senior center and the community & cultural center. 4) They would like to see a senior services coordinator. She stated that staff considered the senior advisory committee input, reviewing other potential sites within the city such as the Grange, the parish hall located across from the community and cultural center, including the indoor recreation center. She said that an informal vote was taken, indicating that the vote was split as to whether seniors chose to stay or be a part of a larger facility. She stated that the key recommended action necessary this evening is to

receive Council direction on whether the senior nutrition programming is to remain included in the center. Once this decision is made, staff can bring forth the schematic design to the Council next week.

Council Member Tate said that he had a conversation with Mayor Kennedy this afternoon, noting that the Mayor raised a distinction in terms of how the City uses the word programming. He inquired whether there were two kinds of programming or whether there was one programming of spaces. He inquired as to the activities that the seniors would participate in at the senior center. If the City is programming spaces without knowing what the activities are, how would the Council be able to make decisions? He inquired whether the City would want to provide a senior center where seniors would want to use the facility all day, participating in a full day of activities. If so, would the nutrition center need to be at the new center to accommodate seniors? Will seniors use the center for an hour or two and the nutrition center be located somewhere else. He stated that he did not understand the programming of the activities aside from the spaces. He felt that the programming of an intergenerational computer room would be a great activity, noting that it has been taken out of the schematic design.

Ms. Spier clarified that what is being discussed this evening is programming spaces. These are areas that allow the City to provide a wide range of activities (e.g., multi purpose use) versus those areas that are tailored for a specific use (e.g., nutrition site). She said that what is being proposed is what the seniors are receiving today 8 a.m. to 2 p.m., Monday through Friday with a senior nutrition program being the main focus. She said that there will be opportunities for lounge use that are informal and different from the nutrition program. She said that the City is very limited as far as the capital construction budget in providing extra spaces such as classrooms. She stated that she informed the senior advisory committee that there will be areas that will be subsidized, programs that will be offered free of charge, while others will require a service fee. She informed the Council that a question was posed as to whether there will be indoor swim classes at the indoor recreation center to which she responded that there would be. However, she felt that the real question is whether the senior swim classes were part of the free programming. She stated that at this point, it was not a free program. She indicated that the City has not taken the next steps where all spaces have been programmed out.

Mayor Kennedy stated that he met with Marilyn Gadway, Chair of the senior advisory committee, last week. She expressed concern that there is only one program for seniors, the nutrition program. The YMCA provides other activities at the Friendly Inn such as card games but that activities are centered on the nutrition program. She expressed her frustration that the City does not have a lot of senior programs/activities scheduled throughout the day and/or weekends. He felt that these activities can be conducted at other locations such as mobile home parks, the Grange, and/or the Community and Cultural Center. The question is whether the Council wants to fund these programs beyond the current funding of the nutrition program. He stated that the first step in the design process should be determining the programs, which in turn, determines programming. He felt that it was important for the Council to decide this evening whether it wants to fund additional programs/activities, earmarking monies to do so. He understands that the City is struggling through a tight/tough budget situation. He recommended that the Council fund more senior program activities. He said that the City has the capability of providing these programs and activities in the design of the indoor recreation center.

Council Member Tate said that the same would apply for the youth.

Mayor Kennedy agreed that no money has been reserved for youth activities other than for the Youth Empowered for Success program. He felt that the City needs to do more in providing programs/activities for its youth. This will then determine what the indoor recreation center will become. He felt that it was late in the game in terms of design as the City is at the conceptual design stage. This would result in having to go back and readdress the programs.

Council Member Sellers requested that staff address the steps to be taken next week, talking about individual spaces. He felt that the City still has some flexibility in terms of program spacing.

Deputy Director of Public Works Struve said that staff could continue its discussion with the senior advisory committee. He said that as long as the City could stay within the exterior walls of what has been drawn in terms of total spaces planned in the center, the City would remain within budget. He said that it may be the case of dividing up the rooms differently. He stated that staff would be back next week with a complete list of programming spaces so that the Council can see what spaces/square footage have been planned for particular rooms. He said that there are additional rooms available for senior use such as a dance room and a lounge, noting that there is 5,000 square feet that includes the multi purpose room. Therefore, there is approximately 3,000 square feet of programmable space within the center for seniors. This space has not been defined in absolute specifics but that staff has talked about the types of spaces that would house senior programming. He stated that the City could still talk about how to better meet the seniors' needs within the total square footage should the City want to divide space up differently. He said that budget limits programming and the goals for the building which is 100% cost recovery. He stated that it is a matter of balancing these two things as an overall driving goal and the best that the City can do is try to gain from the groups what their needs are.

Council Member Sellers said that the cost recovery issue is frustrating to him. He said that the City of Milpitas is developing a brand new senior center of approximately 5,000 square feet. The City is setting aside 5,100 square feet for the center. He stated that the City is not limited to a significant degree in its ability to serve the senior community with a few exceptions such as increasing the space for the nutrition program. He said that the City has talked about accommodating what is anticipated as the growth within the existing facility. He felt that there was an opportunity to go back to the senior advisory committee, within the footprint that has been established; asking them what they believe should be anticipated for the facility. In terms of youth programs, he noted that the City is talking about an intergenerational center to do some programming as has been seen in other facilities. The center can have computers in the youth wing and gives an opportunity for interaction of both groups to use the computers. He felt that there are a lot of opportunities that the senior advisory committee would like to explore. He did not believe that the City was limiting itself.

Mayor Kennedy inquired whether the City may be losing some things based on the philosophy of cost recovery. Would the City be getting what it really wants in this facility?

Council Member Sellers did not believe that it was as much about the cost recovery as the price tag for the entire facility. He said that the City had a finite amount of money that was set aside for the center. He felt that the City could justify enlarging or expanding every component of the facility. He noted that the City does not have the resources to proceed with an expanded "bells and whistle" version; therefore, the City compromised itself. He felt that every component is functional, makes sense, would be a

positive revenue generator, and would provide opportunities for potential future expansions based on the footprint and the architecture.

Mayor Pro Tempore Chang said that as of Monday, the center was \$800,000 over budget. Therefore, the subcommittee had to go through an extreme process to eliminate items. It is the goal of the subcommittee to keep the space as planned, finding ways to retain space. She felt that the subcommittee and staff tried everything that it could to maximize spaces based on the money earmarked for this project. She indicated that the YMCA is provided with \$75,000 in grant money annually for programming/activities. She felt that there were some opportunities when looking at program in working with the YMCA, changing some of the scope or heading toward a different direction.

Mayor Kennedy inquired what services result from the City's \$75,000 grant to the YMCA.

Carol Wood, YMCA representative, responded that the \$75,000 pays her salary and pays for the building's upkeep, lights, overhead, and program activities at no charge to the seniors. She did not know if these activities/programs would be offered at the new center as space needs would need to be determined.

Senior Advisory Committee Member Sharon Lennard felt that the City was at a point in time that a decision needs to be made on the philosophy of how it will deal with the seniors in the community. She stated that the existing nutrition program is working well. She said that there is a large base of seniors that are moving up in years that can be served. It would be exciting to see the possibility of an intergenerational section. She does not see that this space is being accommodated. She expressed concern about the size of the nutrition center and felt that the City is being short sighted in senior spacing. She felt that the City should have rooms for hospice counselling, quilting classes or bridge space that she does not see included in the plans. If the City cannot afford to incorporate these items at this time, she recommended that space be considered for future expansion. She sees the facility growing with intergenerational activities taking place but that she did not see the thought process in place to use the facility to its full potential. She indicated that the highest priority programming space needs for seniors, include the following: 1) a nutrition center, 2) classrooms and 3) meeting rooms. She stated that it would be helpful for the seniors to be able to use rooms throughout the City, in general.

Council Member Tate said that when he attended the Senior Advisory Committee meeting in September, the Commission passed a motion regarding the need for a requirements document. He requested that this document be addressed.

Senior Advisory Committee Member Ken Mort felt that the City needs a requirements document that addresses activities, required floor space, scheduling, etc., that are important priority items for the architect to understand before proceeding with a design. He identified priorities for seniors as follows: 1) a multi purpose room, 2) offices for social/health services; 3) computer room; 4) dedicated lounges for both seniors and youth; 5) dedicated game room for both seniors and youth. The low priorities were as follows: 1) waterslide; 2) spa; and 3) rock climbing wall. He identified the following top priorities for youth: 1) gymnasium/snack bar; 2) computer/study rooms; 3) dedicated lounges for both seniors and youths; 4) dedicated game rooms for seniors and youth; and 5) rock climbing wall. Low priorities include the following: 1) classrooms; 2) personal training; 3) counselling offices for youth. He stated that he understood that a lot of the items do not fit in with the income producing activities. He felt that

the Council needs to be upfront about how much of the square footage of the facility has to be income producing and how much will not. He expressed concern that the spacing for the senior nutrition was on the small side, noting that the Friendly Inn has comparable square footage. He did not believe that the City was providing enhanced services other than providing the seniors with a new facility. He felt that this would be a problem if the senior population increases. He indicated that the multi purpose room could be used to house the nutrition center but that it has to be large enough to accommodate the use.

Council Member Sellers said that he had the opportunity to sit in on a senior advisory committee meeting. He felt that the Council needs to do a better job in its communications with the committee. He stated that he has given a lot of thought about ways the Council can try to bridge the communication gap. He indicated that a majority of the items identified by Mr. Mort are included in the rough schematic drawings. He said that it is difficult to see these specific spaces in the design layout. He indicated that spaces are not set in stone at this point. He supported going back to the committee and walking them through the layout that would include a senior nutrition center, a multi purpose room, etc. They could identify whether uses/spaces have been omitted. He said that the Council could give the senior advisory committee the latitude to identify their space needs, reviewing the priority list to make sure that it still makes sense and that facilities are included. He felt that the Council needs to make a positive statement that that here needs to be opportunities for additional senior programming. The Council could return to the senior advisory committee advising them that the Council is interested in providing them with additional programming opportunities but that it wants to hear from the Committee as to what they believe the priorities should be. This evening, it is the Council's charge to confirm that it wants the nutrition program at the Center. He felt that incorporating the nutrition program at the Center is the right thing to do. He said that the multi purpose room, as designed, is slightly larger than the existing one and that it could comfortably fit 80 individuals with round tables. He felt that that these are the issues that the senior advisory committee can address with the design team as the City enters into the next phase. He recommended that the Council provide an opportunity for the committee to go through programming and site review of the indoor recreation center, confirming that the senior nutrition program would be included within the center. He recommended that the same process apply to the Youth Advisory Committee.

Council Member Tate said that he sees the vitality of the center being for the seniors to spend the day, a portion of the day or to have lunch. Therefore, it would be natural to site the nutrition program at the center as this is where the seniors would spend their time. He understands that the City needs to meet budget. He felt that this is a youth and senior center and not a gymnasium/workout center. However, you have to have these facilities to help pay for the cost of the facility. As these have been incorporated into the design, the remaining space has to be split between the youths and the seniors in order to make it work.

Council Member Sellers felt that it would be likely that the seniors and youth would use the facility a lot more if the center includes an auditorium, gymnasium, and an aerobic/fitness room.

Council Member Tate indicated that the staff report states that the seniors would be charged for the aerobics classes, noting that the seniors are receiving free aerobics classes at this time. He felt that the Council needs to look at programming issues and whether the seniors should be charged for programmed activities.

Mayor Kennedy noted that Council Member Sellers recommended that the programming be initiated by the senior advisory committee. He expressed concern that this would be creating a false expectation that the committee would come up with a list of programming items and that the City would be able to fund them.

Council Member Sellers stated that the Council has not made a positive statement that it is interested in seeing an expansion of programming opportunities. He recommended that the senior advisory committee prioritize their programming needs. He felt that there are opportunities that exist in the community such as the community and cultural center, acknowledging that there are minimal costs associated with programming. He felt that making a declaration that the Council believes that there should be more programming opportunities but that the Council is under a strict budget.

Council Member Tate said that it should be acknowledged that there will be opportunities for expansion, especially with the multi purpose room. He recommended that the multi purpose room be laid out in such a manner that allows opportunity for expansion.

Ms. Spier informed the Council that the Friendly Inn consists of 1,900 square feet and that it was able to accommodate up to 100 individuals. She said that the same configuration could be applied to the 2,000 square foot multi purpose room. She felt that the indoor recreation center can accommodate the current user numbers associated with the Friendly Inn.

Action: *Council Member Tate made a motion, seconded by Council Member Sellers to incorporate the senior nutrition program at the Indoor Recreation Center.*

Council Member Carr stated that the philosophy on how the City would address seniors and senior programming was raised. He noted that a lot has not been said about this. As the subcommittee goes back to the Senior Advisory Committee, the City can try to answer questions such as what drives senior programming. He noted that the senior nutrition program drives senior programming today. If the nutrition program was not located at the Friendly Inn, he did not believe that the seniors would congregate at the Friendly Inn. He stated that this is an important question. He felt that the City needs to determine what drives senior programming. If the nutrition program was not the central attraction to senior programming for the future of Morgan Hill, he felt that the space could be utilized in a much better way other than as a senior nutrition program. He noted that the staff report did not provide a recommendation regarding the nutrition program but did comment that it was staff's impression that the senior areas were being designed for the main purpose of nutrition services in lieu of other senior programming possibilities. He did not know if this was a positive or negative statement. He stated that he liked the direction that was being suggested by Council Member Sellers and that it was his hope that the Council could obtain answers.

Ms. Spier said that the statement she was trying to relay is that the programming seen today is the programming that will be moved to the indoor recreation center regarding the senior wing. She noted that the Council has not broached other subjects such as water aerobics or the gymnasium which would be fee based. She stated that the programming seen today would be driving the programming at the indoor recreation center.

Council Member Carr felt that the Council needs to answer the same questions for the youth side as well (e.g., what will drive the programming, what will attract the youth to utilize the center). He felt that the sooner the Council can engage on these discussions the better.

Mayor Pro Tempore Chang stated that a few years ago, she and Mayor Kennedy visited the Cupertino senior center. She stated that this center was what inspired the City's indoor recreation center. She noted that the Cupertino senior center did not include the nutrition program. Their senior center was designed for a different group of people and that this was what she would like to see developed. She felt that the Council should keep some options open. She recommended that the nutrition program be retained at the Friendly Inn to allow different sets of programming at the center as there are two different audiences.

Mayor Kennedy suggested that the City build the capability for a nutrition program at the new indoor recreation center but leave it temporarily at the Friendly Inn, even after the center is completed. This would result in designing the center for other senior programs. He felt that the Council was allowing the nutrition program drive the center's design. He did not know whether it was good to have the nutrition program be the driving force for the design of the center. He felt that it should be driven by the bulk of the programs that the seniors really want to see.

Council Member Sellers said that in designing the indoor recreation center space it is not reasonable to expect that the exact programs in place today would be in place 25 years from now. He felt that the design team have kept this in mind throughout the design process. He stated that the design would still include a kitchen and multi purpose room. He felt that there may be some minor alterations to the space that should be reviewed by the senior advisory committee. He felt that his motion incorporates flexibility.

Mayor Kennedy felt that it was important to include, as part of the motion, that the Council supports funding to the extent that it is able to expand the senior programs over and beyond the nutrition program. He stated that he would support the motion with the understanding that the indoor recreation center would be designed with flexibility in mind and with expansion capabilities in order to add programs, as needed.

Council Member Sellers said that the budget and space issue being faced with the kitchen is that there has to be dedicated facilities for the senior nutrition program. He said that this is a harder issue to resolve with the senior nutrition center at the indoor recreation center. If the nutrition center is not relocated to the center, you would not need to change the design of the kitchen. In response to Mayor Kennedy's question, he indicated that staff has pushed back to the County the request to limit the amount of dedicated space needed for the nutrition program.

Council Member Carr felt that programming space would be the same regardless of whether the nutrition program was incorporated at the center or whether it was designed as a community use kitchen.

Council Member Sellers felt that the senior nutrition center should be at the indoor recreation center because the seniors may want to be active before and/or after they have lunch.

Council Member Tate said that there is flexibility in using the multi purpose room except during the time the nutrition program is taking place. He noted that the multi purpose room is subdividable and that other uses can take place in the multi purpose room. He felt that the motion would lock in the kitchen more than it would the multi purpose room space.

Mayor Pro Tempore Chang stated that she would not object to programming the space, designing an identical kitchen. However, program-wise, she was not quite there yet.

Ms. Spier indicated that there is a space issue. If the City makes a determination that the nutrition site is to remain at the Friendly Inn, substantial improvements would need to be made to that facility. The Council would need to find monies to continue the nutrition program at the Friendly Inn. There is also a question of how the kitchen is to be laid out for general use.

Mayor Kennedy called for the question.

Vote: *The motion carried 3-2 with Council Member Carr and Mayor Pro Tempore Chang voting no.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **agreed** to try and develop the programming for senior and youth activities, determining the costs associated with the programming for future Council evaluation.*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **agreed to extend** the meeting time to 11:30 p.m.*

City Council and Redevelopment Agency Action

Action: *It was the consensus of the City Council to **consider** agenda item 30 at this time.*

30. DOWNTOWN REQUEST FOR CONCEPTS PROCESS

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that staff has a supplemental proposal regarding Jerry DiSalvo's house located on Monterey Road that deals with the creation of a Morgan Hill Art Guild and Gallery. He informed the Council/Agency Board that a memorandum from the Economic Development Subcommittee has been distributed this evening offering their recommendation of how to proceed with this proposal.

Council/Agency Member Carr stated that at the last Council meeting, the Economic Development Subcommittee stated that it would return with quick hitters and proposals categorized in an area that requires additional follow up. He said that the interest is being placed on quick hitter proposals as the other proposals would require additional follow up. He noted that the art gallery concept is listed under the quick hitter proposals, utilizing the Downtown Association.

Council/Agency Member Tate clarified that the subcommittee would like to look at the DiSalvo proposal through the Downtown Association and that the City would not get directly involved with the business itself.

Mr. Toy said that staff is requesting that the Council/Agency Board give the Executive Director the authority to go ahead and contract with the Morgan Hill Downtown Association in an amount not to exceed \$25,000. This amount would allow staff to proceed with the implementation of an “art experience” concept in the downtown should the Council so direct.

Mayor/Chairman Kennedy opened the floor to public comment.

Rocke Garcia, owner of the Sunsweet property, indicated that he has served on many of the committees relating to the downtown. He felt that the Granada Theater is a key to the downtown. He was hopeful that the City and the property owner could work out an agreement to bring the theaters to the downtown. He stated that he has had an excellent meeting with staff and that he has brought on board a team of individuals to propose a public art project at Third and Depot Streets. He said that the project is moving along and that he would like to continue having excellent meetings with staff. He indicated that this would be a three step project with the main concern of meeting the timing for the next Measure P competition.

Diane Dasovic informed the Council/Agency Board that her family owns four adjacent lots on the north side of East Thirst Street. She stated that as long time residents of this community, the family is excited about the transformation that is taking place in the downtown and looking toward the opportunity of being a part of this historical undertaking. The family is looking to various departments and agencies for guidance and assistance to help long time landowners reach the goals of the new plan. She indicated that the family received a letter today informing them about tonight’s meeting. The family is surprised to see that their project is classified as a quick hitter. She stated that the family is confused about the RFC and classification process. She said that the family was sent a letter by the Redevelopment Agency on September 8, 2003 indicating that the City would be meeting with each RFC applicant to obtain more information about each project. She indicated that her family was never contacted. She felt that the point of the family’s letter was missed and that the letter should not have been classified as an infrastructure issue. She did not believe that the family’s proposal is that of a quick hitter and that the recommended action was not applicable as it does not address the concerns raised in the RFC response letter. She clarified that the letter outlined why the family was not able to put together a proposal with the guidelines that the RFC process requested in a short amount of time. The family also reviewed the other RFCs submitted and noted that others did not follow the guidelines. However, these proposals were pushed forward and were allowed to continue while the family’s proposal is being dismissed.

Council/Agency Member Tate clarified that the subcommittee did not state that they would dismiss this proposal. However, if the quick hitters could not proceed quickly, they were going to be pushed back into other categories.

Mr. Toy stated that it is being proposed to resolve flood control parking issues first. If the family is to develop a project in the future, the family wants to make sure that there is an opportunity to have set aside funding for future residential/commercial conversions. He said that there may be a possibility of creating a commercial rehab program that could meet their needs. He noted that the Council recently

amended City ordinances to provide incentives/remove barriers for residential/commercial conversions such as eliminating impact fees and fire sprinkler requirements. He indicated that the economic subcommittee is going through the process and did not mean to speak to everyone, clarifying that it is the intent to speak with everyone at some point in time. He stated that the subcommittee can speak with the family. If they are not satisfied with discussions, they can be brought back into the process.

Ms. Dasovic indicated that she did not believe that her concern was addressed and that she doubts that the recommended action applies to the family or addresses their concerns. She stated that the family has a lot of questions about this process as well as the downtown plan. She requested that the Council/Agency Board refer the family to someone who can answer questions.

Council/Agency Member Tate clarified that the subcommittee has not met with any applicants as the subcommittee was trying to get the proposals categorized and proceed with the next course of action which is talking to the applicants. It was the subcommittee's belief that it had some programs that could address a part of their proposal, noting that the family did not have a specific proposal but would like to develop one. The subcommittee felt that there may be some assistance that could address some of their needs short term. He said that the subcommittee will need to talk to the family to find out more details about their proposal.

Council/Agency Member Carr said that one thing to keep in mind in this process is that it was designed with flexibility in mind. He stated that the City is trying to proceed with some proposals quickly, applying existing programs so that there is the creation of flexibility. He said that it was the idea to get these two categories established in order to identify priorities for staff in meeting with property owners, specifically quick hitters and that the others would require additional time to gather information. He felt that this was a proposal that the subcommittee/staff needs to sit down and discuss with the property owners. The City could identify the things that have already taken place that can be beneficial and identify items that would be needed in the future. He felt that staff and/or the subcommittee can figure out where their proposal would fall following discussions.

Council/Agency Member Sellers recommended that for this particular project, staff and the subcommittee sit down and meet with family members as their properties are unique to the downtown, noting that family members participated in the downtown plan process. He felt that there are unique attributes not only with these properties and how they relate to the downtown but their significance. He recommended that discussions about the long term plans for the properties be discussed. He requested that the subcommittee and staff meet with the property owners.

Action: *It was the consensus of the Council/Agency Board to **direct** that the economic subcommittee and staff meet with the Dasovic family members to discuss their proposal.*

Council/Agency Member Tate recommended that this project be moved to category 2, the information gathering category as it is obvious that the family is not looking for any of the quick hitter programs.

Council/Agency Member Sellers stated his support of the art guild and gallery concept as conceived. He said that there are specific items that can help expedite this proposal, specifically that it has to be in place within 60 days. He noted that the Downtown Association will be meeting next Tuesday and

recommended that staff make sure that this is included in their agenda for discussion as this is a timely project.

Council/Agency Member Carr stated that staff and the subcommittee would meet as soon as possible with the Dasovic family members. He also noted that Mr. Garcia mentioned that the Granada Theater is of great importance. The subcommittee agrees that the Granada Theater is important and that it is trying to schedule a meeting with the owners of the theater to discuss what is taking place.

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the Council/Agency Board unanimously (5-0) **Approved** the Categorization of Proposals, as outlined in the changes presented this evening.*

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the Council/Agency Board unanimously (5-0) **Directed** Staff to Continue with the Process.*

City Council Action

26. DEVELOPMENT AGREEMENT WITH MORGAN HILL LAND

Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-1 vote with Mayor Pro Tempore Chang voting no, **Authorized** the City Manager to do Everything Necessary and Appropriate to Execute a Development Agreement with Morgan Hill Land, L.L.C.; Including Making Minor Modifications to the Agreement, Subject to Review by the City Attorney.*

28. RESIGNATION OF A LIBRARY COMMISSIONER

Council Member Tate said that it would be his recommendation to try to get the Library Commission back down to seven members. Therefore, he did not recommend a replacement, noting that future attrition would get the Library Commission down to seven members.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Accepted** John Boyne's Notice of Resignation from the Library Commission.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** that the vacancy not be filled and that through attrition, get the library commission back down to a membership of seven.*

29. REQUEST TO SEND LETTER TO THE SANTA CLARA COUNTY CITIES ASSOCIATION, RECOMMENDING CHANGES TO BYLAWS.

Mayor Kennedy indicated that he distributed a draft copy of proposed changes to the Santa Clara County Cities Association. He stated that at the last Cities Association meeting, the Cities Association Board decided on a slate of officers, including two members who were not on the board of directors. He indicated that Mayor Pro Tempore Chang was one of the officers. He raised several questions with respect to the bylaws of the organization. The bylaws state that Board elections must take place in December and that it appears to him that the bylaws intended that the officers of the board should be members of the board. He indicated that the Cities Association disagreed with this position and took the vote that evening. He stated that the Cities Association agreed to amend the bylaws to reflect the actions they took. He indicated that what is before the Council is a draft of recommended amendments to the bylaws that he would like to send to the Cities Association. However, he recommended that the letter be sent after the election takes place in November and the new officers are put into place. He recommended that amendments be sent to the Cities Association in December or after the first of the year.

Council Member Tate felt that the City received a benefit of the election as the City would have two members serving on the Cities Association Board; one officer and a member. He felt that this results in a positive outcome for the City.

Mayor Kennedy said that another point is that it opens the door for other Council members to serve on the Cities Association's executive committee and not be a member of the Board.

Council Member Sellers felt that the City benefited from the outcome as the City has the extra representation. However, had it been another city, Morgan Hill would have less representation on the Cities Association. He said that the other issue he felt needed resolution is the fact the City of Morgan Hill does not have a policy that states that council members will inform fellow council members that they have been asked, in the capacity of a council member, to serve on a specific role. He recommended that the Council give thought to this in terms of council member roles. He did not know if this would be an issue that is addressed as part of the ethics subcommittee. He did not believe that anything was done inappropriately except that the City ended up in a situation where a council member received an appointment and that the other council members heard about it after the fact. He felt that for future councils it would be helpful to have some process in place to review future appointments.

Mayor Pro Tempore Chang thanked Mayor Kennedy for congratulating her on this appointment. She stated that she did not ask for the appointment but received a phone call from the president of the Board asking if she would be interested in serving on the board. She advised the president of the Board that she was not a member of the Board who then indicated that it was not a problem as she was not a member of the board and is serving as Board president. She said that this was a situation where she did not know how to handle the nomination and attempted to take a different approach. She felt that there are things that need to be changed. She stated that she would like to form a united front with Mayor Kennedy.

Council Member Sellers inquired whether it would be appropriate to have two signers on the letter.

Mayor Kennedy stated that the appointment had nothing to do with Mayor Pro Tempore Chang's qualification but felt that the process was wrong as it violated the bylaws. Also, it was inconsistent with policies that have been adopted by the Council in terms of outside agency appointments. He felt that the net result is that the decision that the Cities Association made was to allow non members of the board to serve as officers. This expands the size of the Association, acknowledging that the City of Morgan Hill ended up with two representatives as a good net result. He felt that some members of the board unfortunately took it as a lack of support for Mayor Pro Tempore Chang. He stated that this was not the intent. He recommended that Mayor Pro Tempore Chang review his proposed modifications to the Cities Association, incorporating any modifications she deems would be appropriate to make. He stated that he would suggest bringing the proposed modifications back to the Council.

Mayor Pro Tempore Chang agreed that there are items in the bylaws that need to be clarified. She stated that she would like to review the proposed amendments and work with Mayor Kennedy toward recommended changes to the bylaws.

Action: **No action taken.** *Recommended changes to the Santa Clara Cities Association bylaws to return to the City Council.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Programming for Seniors and Youths (Mayor Kennedy)

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:43 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY



REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: November 5, 2003

Agenda Item # 22

Approved By:

BAHS Director

Submitted By:

Executive Director

Ground Lease For the Morgan Hill Courthouse

RECOMMENDED ACTION(S): If negotiations are completed by November 5, 2003, authorize the Executive Director to execute the ground lease with the County of Santa Clara for the Morgan Hill Courthouse Complex. If the lease negotiations have not been completed by November 5, 2003, this item will be re-agendized for the November 19, 2003 meeting.

EXECUTIVE SUMMARY: In January 2001, the Redevelopment Agency (Agency) approved an Acquisition, Disposition and Development Agreement (ADDA) with the County of Santa Clara (County) to develop the new Morgan Hill Courthouse complex to replace the County's facility in San Martin. The Morgan Hill Courthouse would include six courthouses, court administrative offices, and offices for the District Attorney, Public Defender and other related facilities/offices. The location for the Courthouse complex is the eight acre property just south of the Caltrain lot on Butterfield Blvd. The current plan envisions an 80,000 sq. ft. complex costing upwards of \$40M.

Per the ADDA, the Agency purchased the location for the Courthouse property in July 2003. The ADDA also requires that the Agency enter into a ground lease with the County for the use of the property. The ground lease terms should be based on provisions in the ADDA. Although some issues remain to be negotiated, the key terms are as follows:

- Rent is a \$1 per year.
- The ground lease term is for 40 years.
- At the end of the ground lease, the property automatically conveys to the County. You may recall that the Agency preferred a ground lease to provide some control over the property.
- The County must operate a Courthouse for the first twenty years. For the remainder of the ground lease period, the County may operate a Courthouse or County offices.
- The ground lease includes language to allow for bond financing of the project.
- The Agency will reasonably cooperate in the possible future transfer of a portion of the courthouse facility to the State of California.
- The ground lease provides that the remaining \$3.5M of the Agency's contribution to the Courthouse project be paid in four equal installments (\$875,000) from 2003 to 2006. The last payment is due upon the completion and occupancy of the facility.

The ground lease is required so that the County can secure the bond financing for the project. The County anticipates bidding the project out in Spring 2004 with a targeted completion date in early 2006. If finalized, the ground lease will be distributed to the Agency prior to this meeting, otherwise the issue will be re-agendized to the November 19, 2003 meeting for consideration.

FISCAL IMPACT: The ground lease does not have a financial impact as it merely incorporates the terms of the ADDA.



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

DEVELOPMENT AGREEMENT DA 03-05: DEWITT – MARRAD GROUP

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY:

The applicant is requesting approval of a development agreement that will cover the development commitments for a 4-lot subdivision located on the west side of DeWitt Avenue approximately 700 feet south of the intersection with West Dunne Avenue.

The two-acre project (APN 773-08-015) received a total of three building allotments in the 2003 Measure "P" competition; two allotments for Fiscal Year 2004-05 and one additional allotment for Fiscal Year 2005-06. There is an existing home on the project site, which will be demolished and replaced with a new home. As there is an existing home, no Measure "P" allotment is required for the fourth home site.

In accordance with established City Council policy, all residential projects awarded building allotments through the Residential Development Control System must secure City Council approval of a Development Agreement. The purpose of this agreement is: to secure commitments made during the Residential Development Control System process, and to establish a development schedule and mechanism for monitoring project success. Special attention is directed to Paragraph 14 of the Agreement, which addresses the developer commitments made during the 2003 Residential Development Control System process. Exhibit "B" of the agreement sets forth the due dates for actions prior to construction.

The Planning Commission reviewed the development agreement application at its October 14, 2003 regular meeting. The Commission voted 6-0, with one Commissioner absent, approving the request. The Planning Commission staff report and minutes are attached for the Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # <u> 23 </u>
Prepared By: _____
Planning Manager
Approved By: _____
Community Development Director
Submitted By: _____
City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-05: DEWITT – MARRAD GROUP (APN 773-08-015)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-23, adopted April 22, 2003, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMP-03-02: DeWitt – Marrad Group	4 Single-Family Homes (3 allotments)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 5th Day of November 2003, and was finally adopted at a regular meeting of said Council on the 19th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 19th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *November 5, 2003*

Agenda Item # 24

Prepared By:

Planning Manager

Approved By:

CDD Director

Submitted By:

City Manager

ZONING AMENDMENT, ZA-02-16; DEVELOPMENT AGREEMENT AMENDMENT, DAA-02-09: DEWITT - MARQUEZ

RECOMMENDED ACTIONS:

1. Open/Close Public Hearing
2. Waive the reading in full of the Zoning Amendment (Prezone) Ordinance
3. Introduce on first reading the Zoning Amendment Ordinance (roll call vote)
4. Waive the reading in full of the Development Agreement Amendment Ordinance
5. Introduce on first reading the Development Agreement Amendment Ordinance

EXECUTIVE SUMMARY: A request for approval of a Precise Development Plan and RPD for a 5 lot, 9.45 acre area and a development agreement amendment for a two acre area to be subdivided within the RPD located on the west side of DeWitt Avenue 700 feet south of the intersection with West Dunne Avenue.

The Zoning Amendment would expand the DeWitt Landowners RPD, which has 3 existing parcels, to five parcels for a total of 9.45 acres. The expanded RPD will include two parcels south of APN 773-08-014 that are currently outside the City limits. The request is therefore a zoning amendment for the 3 city parcels and a rezoning for the two unincorporated parcels. The expanded RPD will show a total of 21 lots, an extension of Price Drive to connect John Telfer Drive and DeWitt Avenue, and a looping street that will provide additional access between Price Drive and DeWitt Avenue. The RPD will allow deviation from the minimum lot size requirement and side yard setbacks for the R1 (12,000) district and will also allow a shift in density to create larger lots in the area of relatively steep slopes on the western portion of the RPD and smaller lots on the gently sloping lower areas to the east. The resulting overall density of the RPD will be 2.22 units/acre, which is within the maximum permitted density of 3 units/acre under the "Single-Family Low" General Plan designation. The proposed unit layouts provide for variation in the front and rear yard setbacks, consistent with the project's Measure "P" commitments.

A standard development agreement (Exhibit A) was approved for the proposed subdivision on May 21, 2003, prior to approval of the project, in order to amend the standard development schedule to better fit the project's needs. Due to the extended time required to complete the environmental analysis, several deadlines have lapsed without project compliance. The applicant is requesting that the agreement be amended to allow adequate time to complete the project. The amended agreement is attached.

The Planning Commission considered the zoning amendment at the October 14, 2003 meeting and voted 5-2 to recommend approval. Several residents of adjacent homes expressed concern at the meeting in regards to the extension of Price Drive between John Telfer Drive and DeWitt Avenue. The Commission's staff report and draft minutes are attached for Council's reference. The Commission also considered and recommended approval of annexation of APNs 773-08-015 and 016, which will be deferred from Council consideration until such time as the applicant submits a signed pre-annexation agreement and receives clearance from the City's Building Division that there are no code violations on site.

FISCAL IMPACT: None. Filing fees were paid to the City to cover processing of this application.

Attachments:

1. Zoning Amendment Ordinance
2. Dev. Agreement Amendment Ordinance, Amended Agreement
3. Planning Commission Draft Minutes and Staff Report, dated October 14, 2003
4. Vicinity Map

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1310 WHICH PREZONED 9.45 ACRES LOCATED ON THE WEST SIDE OF DEWITT AVENUE NORTH OF SPRING AVENUE FROM COUNTY HS, HILLSIDE TO CITY R-1 (12000)/SINGLE FAMILY RESIDENTIAL PLANNED DEVELOPMENT. THE AMENDMENT INCLUDES THE ADOPTION OF A PRECISE DEVELOPMENT PLAN FOR THE 21-LOT, 9.45-ACRE RESIDENTIAL PLANNED DEVELOPMENT (APNs 773-08-012 through -016)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration has been filed.
- SECTION 4.** The City Council finds that the proposed RPD and Precise Development Plan are consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves the Precise Development Plan as contained in that certain series of documents date stamped October 8, 2003, on file in the Community Development Department, entitled "Lands of Marrad" prepared by MH Engineering Co. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** Approval of the Marrad/DeWitt Landowners RPD and Precise Development Plan shall allow the following deviations from the R-1(12,000) zoning district in order to provide for clustering on the gently sloping easterly portions of the project site and reduce the density of development on the more steep westerly portions of the project site:

Lot No.	Setbacks	Lot Size
1	6-foot left side yard setback	9,651 square feet
2	Five-foot side yard setbacks – both yards	9,878 square feet
3	Five-foot side yard setbacks – both yards	10,536 square feet
4	7 ½-foot right side yard setback	10,249 square feet
5	Ten foot side yard setbacks – both yards	--
6	--	9,261 square feet
7	--	9,788 square feet
8	--	10,396 square feet
9	--	10,197 square feet
11	--	10,373 square feet
12	--	9,052 square feet

SECTION 7. With the exception of the deviations allowed under Section 6 of this Ordinance, buildout of the Marrad/DeWitt Landowners project shall comply with the site development standards of the R-1(12,000) zoning district. Any additions/modifications to the approved building plans shall also comply with the site development standards of the R-1(12,000) zoning district.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 5th Day of November 2003, and was finally adopted at a regular meeting of said Council on the 19th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 19th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1618, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-02-09 FOR APPLICATION MMP-02-02: DEWITT – MARQUEZ TO ALLOW FOR A THREE-MONTH EXTENSION OF TIME FOR FINAL MAP SUBMITTAL AND A SIX-MONTH EXTENSION OF TIME FOR BUILDING PERMIT SUBMITTAL FOR FOUR (4) BUILDING ALLOTMENTS AWARDED IN THE 2002 RDCS COMPETITION (APN 773-08-014).

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 02-37, adopted May 14, 2002, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMP-02-02: DeWitt – Marquez	5 single-family homes (4 allotments)

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. The applicant is requesting to amend the approved development agreement approved under Ordinance No. 1618 to allow for a three-month extension of time for final map submittal and a six-month extension of time for building permit submittal for four (4) building allotments, due to delays not the result of developer inaction. Delays in project processing have occurred due to the extended period of time required to conduct the environmental analysis for the project. An Exception to Loss of Building Allocation is granted, extending the deadline for final map submittal to December 1, 2003, and extending the deadline for building permit submittal for the two (2) building allotments awarded for 2003-04 to January 15, 2004, and for the two (2) building allotments awarded for 2004-05 to January 15, 2005.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. AMENDED DEVELOPMENT AGREEMENT. The amended development schedule, attached as Exhibit A, shall replace the schedule approved under Ordinance No. 1618.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 5th Day of November 2003, and was finally adopted at a regular meeting of said Council on the 19th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 19th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

AMENDED RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2003, by and between JOHN MARQUEZ, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On May 21, 2003, the City Council of the City of Morgan Hill adopted Ordinance No. 1618, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on June 21, 2003.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

(a) "City" is the City of Morgan Hill.

(b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.

(c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.

(d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation

Exhibit "B" - Development Review and Approval Schedule

Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be

transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On May 14, 2002, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MMP-02-02: Dewitt - Marquez, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

- 1) Construction of two (2) units within fiscal year 2003-04 and two (2) units within fiscal year 2004-05, as approved by the City of Morgan Hill Planning Commission, and replacement of one existing home with one new home on the project site.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall

be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100%

of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage

insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single-family Medium and zoning classification of R-1 (12000)/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

- (a) Permitted uses of the property are limited to the following:

Those shown on the Tentative Map, Grading Plans and Precise Residential Development Plans, as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plan as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural Plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural Plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following safety features in the development:

- (i) Escape ladders shall be provided in all upper floor bedrooms.
- (ii) Each home shall be provided with two (2) mounted fire extinguishers.
- (iii) Each home shall be equipped with fire sprinklers throughout.
- (iv) The applicant shall provide outdoor lighting to meet all police department specifications.
- (v) The applicant shall install illuminated or self-luminous address numbering for each unit and painted curb numbers, where possible.
- (vi) All homes shall have an alarm system.
- (vii) All units shall have stucco and stone exteriors.
- (viii) All homes shall be equipped with fire sprinklers NFPA 13D systems.

(i) Property owner agrees to include the following Open Space features and improvements in the development:

- (i) The total building coverage shall not exceed 24.6 percent or 0.326 acres of the net site area.

(j) Property Owner agrees to include the following School features:

- (i) The applicant agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.
- (ii) The applicant shall provide handicap ramps at intersections of Alkire and De Witt Avenues and Dunne Avenue and DeWitt Avenue or any other improvement deemed worthy by the MHUSD at a cost of \$1000/unit.
- (iii) Any other improvement deemed worthy by the MHUSD at a cost of \$2000/unit making the total contributions \$3000/unit.

(k) Property Owner agrees to purchase double the transferable development credits (TDC's) subject to this development potential transfer mechanism, with each phase. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(l) Property Owner agrees to include the following affordable housing features in the development:

- (i) ***The applicant shall pay double the standard housing mitigation fees, in accordance with the approved Measure "P" Project Evaluation, prior to the issuance of the first two building permits.***

(m) Property Owner agrees to include the following construction features in the development:

- (i) The development shall include five (5) lots, three (3) floor plans and five (5) elevations.
- (ii) The project will use vinyl framed windows w/EPA "Energy Star" labels per item B2.ai. All homes will use high efficiency gas furnaces.
- (iii) All homes will have zoned high efficiency heating systems – (2) for homes o/3000 sq. ft. & dual zoning for each level @ homes less than 3000 sq. ft.
- (iv) A/C units shall be used with a "seer" rating of 12 or higher (typ. @ all homes).
- (v) All homes shall be equipped with recirculating hot water systems with demand pumping.
- (vi) All homes shall have cast iron drainage pipe. All homes to have home running phone lines from all habitable rooms directly to main phone box using RJ6 for TV/Video & CAT 5R (or equal) for telephone lines.
- (vii) All homes shall have Class "A" concrete roof tile (Class "B" min. required per code) All subfloors to be glued and screwed (nailing only is required. TJI floor joists to be used on each floor framing. (Sawn lumber is acceptable per UBC) All homes to be preplumbed for gas to dryer along with 220V outlet. All external walls to be wrapped with min. of 3/8" CDX plywd. sheating.
- (ix) Roof lines used will be hips, gables, dutch gables and high "dormers" to create roof articulation for each elevation.
- (x) Project is next to "The Oaks" to the north and shall incorporate roof slopes and use of stone, brick and stucco

from “The Oaks” and hips and gabled roofs from “The Oaks” and the custom homes to the west.

- (xi) On all homes, second story shall comprise less than 50 percent of first story footprint. Roof lines break up two-story elements on sides and rear elevations. Bay windows, cantilevered areas and varying wall planes shall be used to create architectural relief on all four sides of homes.

(n) The Property Owner agrees to provide the following Public Facilities:

- (i) The project shall meet all standards for design of public facilities.
- (ii) The applicant shall install public facilities of sufficient size to serve the proposed development and future developments without the need to install supplemental facilities.
- (iii) The drainage concept shall be consistent with the City’s Storm Drain system.
- (iv) The storm drains to be maintained by the City shall all be under pavement in Price Drive street extension.
- (v) The applicant shall pay \$1000/unit into offsite storm drain fund.
- (vi) The applicant shall contribute \$1000 per unit to the Capital Improvements Program Fund.

(o) The Property Owner agrees to provide the following Park and Recreation improvements:

- (i) The applicant shall pay triple the required park fees.

(p) The eight-inch water main in DeWitt Avenue shall be gridded to the eight-inch main in John Telfer Drive.

(q) The Property Owner shall record constructive notice for the development that the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(r) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraphs 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
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Property Owner:	John Marquez Marrad Group P.O. Box 1767
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Morgan Hill, CA 95038

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

City of Morgan Hill
Resolution No.
EXHIBIT A

IRMA TORREZ, City Clerk

PROPERTY OWNER

JOHN MARQUEZ

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

City of Morgan Hill
Resolution No.
EXHIBIT A

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MMP-02-02: Dewitt - Marquez

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

AMENDED EXHIBIT "B"

**FY 2003-04 (2 allotments), FY 2004-05 (2 allotments)
DEVELOPMENT SCHEDULE MMP-02-02: Dewitt – Marquez Subdivision**

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications filed:	10-08-02
II.	SITE REVIEW APPLICATION	
	Application filed:	11-20-02
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	12-01-03
IV.	BUILDING PERMIT SUBMITTAL	
	FY 2003-04 Submit plans to Building Division for plan check:	1-15-04
	FY 2004-05 Submit plans to Building Division for plan check:	1-15-05
V.	BUILDING PERMITS	
	FY 2003-04 Obtain Building Permits:	3-31-04
	FY 2004-05 Obtain Building Permits:	3-31-05
VI.	COMMENCE CONSTRUCTION	
	FY 2003-04 Commence Construction:	6-30-04
	FY 2004-05 Commence Construction:	6-30-05

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Building Permit application three (3) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least two (2) dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments.

City of Morgan Hill
Resolution No.
EXHIBIT A

Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

**LEGAL DESCRIPTION
MMP-02-02: Dewitt - Marquez**

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

(City of Morgan Hill)

That portion of Lot 89, Catherine Dunne Ranch Map No. 3, as shown on a Map recorded in Book H, Page 65 of Maps, Records of Santa Clara County, California.

Beginning at a point in the centerline of DeWitt Avenue, distant thereon North 2° 57' West 315.412 feet from the point of intersection of the centerline of DeWitt Avenue, with the dividing line between lots 88 and 89 of the Catherine Dunne Ranch Map No. 3, as recorded in the office of the County Recorder of the County of Santa Clara in Book "H" of Maps, Page 65, Records of said County; thence running North 2° 57' West and along the centerline of said DeWitt avenue 157.706 feet; thence running at right angles South 87° 0.3' West 552.4 feet to a point on the Westerly line of that certain 9.45 acre tract of land conveyed by Angelo Capitolo and Sulina Capitolo, his wife, to R.H. Henckens by Deed dated March 21, 1931 and recorded March 27, 1931 in the office of the County Recorder of the County of Santa Clara, State of California in Liber 562 of Official Records, Page 276, Records of said County; thence running South 2° 57' East and along the Westerly line of said 9.45 acre tract of land, 157.706 feet; thence running at right angles North 87° 03' East 552.4 feet to the point of beginning.

Assessor's Parcel Number: **773-08-014**